Harland Clarke Webcast - The Informed Banker Series
Regulations on the Horizon Affecting Community Banking TRANSCRIPT
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Presenter: Shaun Kern, Counsel, Center for Securities, Trusts & Investments, American Bankers Association

Jeb: Good day, and welcome to Harland Clarke speaker series, The Informed Banker. Today's topic is Regulations on the Horizon Affecting Community Banking. This audio cast is being recorded and you will be sent a link for playback next week. If you have any questions, please use the chat box located in the webinar control panel. Your questions are private and they're only seen by the presenters. I will now turn the call over to our host, Gwen Cuffie, Vice President of Payment Solutions Marketing with Harland Clarke. Gwen, you have the call.

Gwen: Thank you, Jeb, we are very excited to continue our Harland Clarke informed banker audio series. Today our focus is on regulations on the horizon that will affect community banks. We hope to answer all the questions you have and share insights that you may not have considered on this topic. This monthly series which is exclusive to Harland Clarke clients is designed to connect you with industry experts who will share their insights on the topics you have told us you want to hear about.

With that, I'm pleased to formally introduce today's speakers Shaun Kern. Shaun Kern has served as counsel in the Center for Securities Trust and Investments at the American Bankers Association. Before joining the ABA, he was a Policy Analyst for the Bipartisan Policy Center Financial Regulatory Reform Initiative. He holds a Bachelor's Degree from Arizona State University and a Law Degree from Georgetown University Law Center. While in law school, he worked at the Financial Services Round Table helping them track the legislative text and congressional development leading up to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. He also worked as part of the Treasury Department's Consumer Financial Protection Bureau Implementation Team helping create a new independent federal banking agency housed within the Federal Reserve. Welcome, Shaun.

Shaun: Thank you, Gwen. Thanks for having me.

Gwen: It's great to have you here today. We have a few questions for you, Shaun, so we'll get started. Our first question is, as I understand it, at the American Bankers Association, you have been tasked with the EGRPRA review which sounds like a mouthful. Tell us what does EGRPRA stand for and how is it connected to community bank burden?

Shaun: Thanks, Gwen, sure thing. EGRPRA stands for the Economic Growth and

Regulatory Paperwork Reduction Act of 1996. It is indeed a mouthful. This is actually an exercise to reduce regulatory burden for community banks. It is an effort that's being undertaken by the Federal Banking Regulators, the FDIC, the Federal Reserve, and the Office of the Comptroller of the Currency.

Gwen: That's great information, Shaun. Can you tell us how often does this exercise happen? Also, can you just tell us a bit more about how this regulatory review works?

Shaun: Sure thing. This is done once every ten years. It was placed into a bill in 1996. It's actually a bill within a bill and it's a section within that bill. It's a rather complex legislative – it's very complex legislative gymnastics that brought it out. Sometimes you wonder if anything good can come from something so complex, especially with such a long acronym. This exercise is done every ten years. All of the banking agencies have to take a fresh look at all of their regulations to see how they line up. Do they still meet their purpose? Are they outdated? Are they unnecessary? Have developments in the marketplace changed the need to see these regulations still on the book? Are they worth the paper they're written on?

One thing that I think is somewhat concerning, however, is just the process itself doesn't really require the agencies to do a whole lot. They have to write a report to Congress. They have to take a fresh look and invite comments from an interested public on the rules that they've got in place. There is no mandate for them to make fundamental changes. That is not unless they want to. Another concern is that this was passed in 1996. As you know, Dodd-Frank was passed in 2010. That means that without having thought it through, and they did not think it through, this bill would not apply to things that were created after '96, like the Consumer Financial Protection Bureau. There are components to that which are really problematic. The CFPB is a major source of regulatory burden.

In short, this is an exercise that we think could deliver some moderately positive changes, especially in the next year or so. They've been pretty close to wrapping this up. We're still encouraging some of our member banks to keep modest expectations, especially since, as I mentioned, the CFPB is not a part of this exercise.

Gwen: Shaun, that's great background information. Let me ask you, with the EGRPRA review, where have banks sought relief? Where has the ABA focused this attention?

Shaun: The method that the agencies have used to seek out feedback from the industry is through the traditional routes which would be comment letters, but also through outreach mediums across the country. We've been talking to banks on both fronts. We've been talking to banks to help inform some of the comment letters we've written to the agencies. We've also been point persons for the bankers that are presenting in front of the regulators to give them ideas as to what they might take a careful look at. It would really help community banks.

Some of the focus points for us were on capital. We believe that for community banks all across America that have far more capital than the Basel III requirement would put in place for them. There's no reason for them to go through a costly compliance exercise of proving that. If you've got way more capital on the books that are twice as much or something like that, why do you have to do all this rigmarole to figure that out?

Call reports, that's another one. It's just an increasingly growing reporting burden for community banks all across America. We hear it all the time. We've made an effort to really focus the attention of the agencies to make that easier for community banks. Not all of that's automated. There's a lot of manual work that needs to be done. A lot of that information is not based on trying to make banks operate in a more safe and sound way. They're focused on efforts to get information for research purposes. That may be nice to have, but we're asking a lot of America's community banks to do it.

We also focused on the Small Bank Holding Company Policy Statement, which allows greater use of debt at the holding company for smaller institutions. There's a threshold set there, at $500 million. We asked for them to bring that up to $1 billion. We also asked for the same thing for the 18 month exam cycle. We have regulators and their examiners coming in every 12 months. Under standard law, we thought, "Boy, you ought to let more and more banks deal with an 18 month cycle instead of a 12 month cycle, which is the standard."

Finally, we raised the attention of the Privacy Notice issue which is that if you're a community bank or any bank in America, you often have to send Privacy Notices and your Annual Privacy Policies to your customers through the mail, even if nothing's changed. It's just a waste of the paper it's printed on.

Those are some of the points that we have raised. What I would say is that we've had some really great success there. On the call report front, the agencies have taken a serious look at this. They've actually just released several days ago, a proposal to reduce the burden for small banks on the call report. They have set up a proposal that ABA's going to be looking at and responding to. To create a community bank call report that may eliminate as many as 950 line items. Just for perspective, that's about 40% of the line items on the call report. They would also reduce the frequency of filing, to reduce it for some schedules to go from quarterly, which is the current state of affairs, to something more like semi-annually, or even annually in some instances. That would be great, very help for community banks. That would very much ease things.

The Holding Company Policy Statement, the 18 month exam cycle, the Privacy Notices that we mentioned, we called on the regulators to take a careful look at this. We had some great luck. We had some air support. Congress actually, at the end of the last two years, has enacted each of those policies as part of end of the year legislations. We've seen some real help through Congress, which has been very helpful. That's something to think about. We've had these modest successes, but all of these successes are coming at end of the year legislation passed by Congress. Unfortunately, it was not the regulators that provided this relief.

Gwen: Shaun, that is some very good information, quite interesting and encouraging. You know Congress and at least some regulators – it's encouraging to know that Congress and some of the regulators are thinking about reducing bank burdens. That certainly doesn't sound like the story that most community bankers are hearing coming out of Washington. A more familiar story, at least to us, sounds like more regulation and more scrutiny than ever. Are things really getting better or are more regulations on the horizon?

Shaun: Thanks, Gwen, that's a fair point. I think one reason to outline a little bit of what I was talking about on this EGRPRA review is that there are regulatory changes on the horizon, but maybe they'll be good ones. There may be good news coming up. However, you're absolutely right. There's plenty of extra burden coming as well, unfortunately. A lot of community banks see and hear that. They report it to us with great frequency.

I think a great example of this is just really looking at what the Consumer Financial Protection Bureau is doing these days. Just recently, I think let's say, one in June, one at the very end of July about two weeks ago, we started to see some proposals that are just huge. In June, we saw the Small Dollar Credit Proposal come out from the CFPB. This is what other people call the Payday Lender's Rule. That sounds like something banks wouldn't have to worry a whole lot about.

One insight that I might share with some of the folks that are on this call and that may be thinking about what's applicable to them. This one might have slipped through the cracks a little bit because the CFPB is regulating all forms of short-term credit no matter the source. Any loans that are 45 days or less and have what is called an all-in APR exceeding 36%, it applies to them. For community banks, this often takes the shape of accommodation loans for borrowers that you have a great relationship with. You want to help them out on something if they're in a tight spot or if they're not going to finance some of their short-term expenses through credit cards or other forms, they may come to a bank. That may ultimately become something that is not available to community banks by the time this rule is finalized. It's a beast too.

The Small Dollar Credit Rule is 1,300 pages. For community banks to have to sort that out and sift through that, it's pretty remarkable that the bureau has set that expectation. It's not just that. The CFPB's Small Dollar Credit Rule is just the start. They've also, just last week, released amendments to their Mortgage Servicing Rule. The Mortgage Servicing Rule itself was huge. The amendments to that rule are 900 pages. They're taking a second bite at the apple and it's 900 pages, just the remarkable compliance burden for some of the nation's smaller institutions

A lot of these are so fast and so furious that we're still sifting through them ourselves to see exactly what they're doing and what they're implications would be on our membership base. Another example, again from the CFPB, the Debt Collection Rule Making, this came out the end of July. They're talking about opportunities to regulate the way third party debt is collected. That's going to have a real impact on community banks. If third party debt collectors have a certain set of requirements they have to meet, they are going to be asking different things from community banks in order to purchase, acquire, or service that form of debt.

Another preview that the CFPB buried into a very large rule making has given us, it's an insight that you have to look for, is that they're also taking a careful look at the way, not just third party debt is collected, but they're going to be taking a look at in the future at first party debt collectors, a.k.a. community banks. That's something we're also going to keep an eye out. That's absolutely squarely into the response to your question as to what's on the horizon from the CFPB. I think those are just several examples. Unfortunately, there are always more as to what the CFPB and the bureau is up to, but that would be a start just for some of the regulations that we've seen from the CFPB lately.

Gwen: Shaun, you've shared quite a few regulations that are coming out of just the CFPB, but are there regulations from other sources as well?

Shaun: Yeah, unfortunately, that is also true. We do see regulations coming out of a range of different agencies. It's encouraging to see that the FDIC, and the Federal Reserve, and the OCC are looking to pare back some of their work. It's disappointing to see that the CFPB has really moved ahead. What we've seen as a trend in the last several years is just this tendency, and we think it's going to continue. We think that as community banks look at how to comply with regulations. They're going to have to look in an ever broader set of places and they're going to have to be paying attention to just more and more federal agencies that are issuing rules that do apply to banks.

Just a couple of examples, FEMA, the Federal Emergency Management Agency, when it comes to the administration of their National Flood Insurance Program, they set a range of expectations about enforcing the mandatory purchase requirement for flood insurance, but they don't give any guidance along the way. If banks try to figure out how are we going to comply with this sort of stuff? You get no help from a regulator at the federal agency level that sets out a lot of the requirements that are there. They charge the banking agencies with enforcing it, but they both need to be dancing together if we want to see community banks have an opportunity to be in full compliance with this law and eliminate that uncertainty that often times captures compliance officers.

Another one would be the Department of Defense has regulations under the Military Lending Act. I don't know as much about this one. We have folks working this one hard. At its most basic level, lenders have responsibility to provide certain forms of credit protection to military personnel, their spouses, and their dependents. They have to provide essentially separate terms and products for that group. There are a lot of administrative challenges that accompany that. There's always a question is how exactly we handle that?

Another thought would be the Department of Education has rules on cash management. When they disburse funds under the Higher Education Act, there are new regulations that have come out, very burdensome, have really added a regulatory complexity that banks have in trying to service colleges that are trying to disburse their funds to their students through debit cards and other functions.

The FCC does this with the Telephone Consumer Protection Act. That regulates telemarketing phone calls, auto-dial calls, pre-recorded calls, and that sort of thing. They've also made that very difficult for banks to get the permission they need from consumers just to let them know that you have a cyber-breech, you have an account alert that's really important to you.

The Department of Labor's Fiduciary Rules, the same thing. We could go on and on. I don't want to drone. I know that we're a little tight on time, but I'll tell you one of the toughest things about community bank compliance right now is just that even if we're seeing different regulators thinking in different ways, we may see less regulation out of the banking agencies. We're seeing more out of the CFPB. We're seeing a far greater number of regulators think about banking and how to regulate banks.

Gwen: Shaun, what else do community banks think about when it comes to these new regulatory burdens? What do you think is keeping them up at night?

Shaun: I only point your attention to one thing which was something we hear because we do represent banks of all sizes. That's the phrase best practices or trickle down. A lot of times rules will come out and the expectation is that they're set to a certain size of institution. There's a premise in Dodd-Frank that it's really for the big guys. A lot of that stuff finds its way to roll downhill. Those phrases I think really are something to pay close attention to.

We see this all the time where you'll have a rule, for instance, the Incentive Compensation Rule, that's come out recently where for the largest institutions, we've got the banking regulators regulating the forms, and duration, and type of compensation banks can pay their employees and senior personnel. They have different rules for the biggest guys. They have different rules for the medium-sized guys. They have different rules for the smaller-sized guys.

Over time, some of these examiners, what will happen is from region to region or different regulators will interpret things differently. They may expect a $1 billion institution to behave in a way that maybe a $10 billion or $15 billion should behave. You start to find that there's a lot of passive-aggressive pressure that is placed on these institutions to conduct themselves in compliance with the set of rules that are not intended and not applicable to them at least by statute and regulation. That's one we think a whole lot about as well. Okay, I'll stop. I don't want to run out of time.

Jeb: Wait a minute, Shaun. We have a poll that we could pop up right now and get everyone to vote on. Then we can roll over to Q and A. If you have questions for Shaun, please go ahead and type those in the chat and we'll queue them up and review them and try to get to those, as many as we can.

Real quick, we're going to launch a poll. If you can just select the important responses, you can select more than one. Our question is how does your institution learn about new federal/state regulations that may be applicable to them? Check all that apply. You can select one or more of the following. We'll give you a few seconds for folks to just answer those questions. Communications from your federal/state regulators, is that your main one? Updates from trade association, updates from industry conferences, or maybe you have another source that's actually your most important one.

We've had over half the audience has already voted and they're still coming in. We'll close the polls here in a few seconds. Everyone's doing great. We're up to 71% participation. We'll go ahead and close the poll and we'll share the results. Any comments on the results, Shaun?

Shaun: Let's see, I'm trying to see how to pull them up.

Jeb: It looks like you should be able to see this on the screen, but we have 70% -- it looks like actually everyone is almost equally reliable on all three sources, 70% for communications from federal/state, 72% from trade associations, and 64% have answered updates from industry conferences. It just sounds like there are a lot of sources.

Shaun: Yeah and that I think is a good thing. Great, no, that is the question we had is how many folks are doing more than one. It sounds like those are the right places to find it, so that's great.

Jeb: Gwen, do you want to handle the, we've had a couple questions come in. Do you want me to read those out or did you want to take those?

Gwen: Yes, Jeb, why don't you read those for me? Thank you.

Jeb: The first question here is with the shortage of appraisers growing every day, will the ABA push to raise the $250,000 evaluation exemption?

Shaun: Yeah, I'm happy to take that. I don't end up doing a lot of the appraisal work here at ABA. We do have some folks who work hard on the mortgage team. One thing I'll say is that we heard a lot of that in the EGRPRA hearings. We had banks from across America raise that point with the regulators. We've heard and we hear that. We certainly don't want to be in a position where we look like we are advocating for anything that looks like lower underwriting standards in America. That's something that in terms of its optics would be very unfortunate.

The question raises a really good point which is there are just some communities where you don't have a lot of appraiser competition or it's difficult to find comparable properties. We also think that for institutions that have the resources and capability to make those evaluations themselves. Half the time, the appraisals are check the box exercise. The bank knows better than the appraiser what their local market, their local community looks like. They're in the best position to properly underwrite and value a property because they're community banks and they're their communities.

We've grappled a little bit with that one. We have been listening to our members there. We know that there's some continuing work that's been done at the FDIC. They've been very specific in setting up a set in Arlington, Virginia in a public forum. The last group we're hearing FDIC Chairman Gruenberg did mention that they are going to be looking into this and they're going to put out some public comments or request s for comments on the benefits and drawbacks of that. I think we're going to be listening to hear what our institutions think and whether or not we should weigh in.

There are advantages and disadvantages to both. That's a tough one. We're kind of hedging on that. I have to be honest. We're certainly sensitive to that point, especially in rural communities. It's just something that these institutions should probably be equipped with and we know that. That's something we're thinking hard about.

Jeb: Great. We have one other question here. Shaun, by the way, I didn't mean to put you on the spot. If you don't know the answer to any of these, we will research them and get them back in our follow-up email that we're sending out to all registrants. With that, you have that out. Here's a question. Did the Military Lending Act replace the John Warner Act?

Shaun: I don't know a whole lot about that one, so I'm glad you previewed that quickly.

Jeb: Mary, thank you for asking. We'll get the response back to everyone in the audience. With that, we don't' have any additional questions. I would point out that we have Shaun's information here. He's been kind enough to provide his email and his phone number. Gwen, do you want to wrap us up?

Gwen: Yes, I do. Thank you, Jeb. Shaun, thank you so much for being with us today and sharing your valuable insight. I want to thank all the participants who made it a priority to be with us today. We hope to see you on our September session and have a great afternoon.