Comments of the Independent Regulatory Review Commission

Independent Regulatory Review Commission

Department of Banking and Securities Regulation #3-51 (IRRC #3021)

Assessments

November 14, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the September 14, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Banking and Securities (Department) to respond to all comments received from us or any other source.

1. Need; Reasonableness; Fiscal impact.

According to the Department, this proposed rulemaking would establish an assessment schedule for State-chartered institutions (institutions) which would provide adequate and sustainable funding for the Department and streamline reporting and billing requirements for institutions. Information provided in the Regulatory Analysis Form (RAF) indicates that the rulemaking will increase costs to the institutions by $3,550,000 in Fiscal Year (FY) 2014-2015; $6,386,000 in FY 2015-2016; $9,224,000 in FY 2016-2017 and $9,739,000 in FY 2017-2018 over what would be collected in FY 2012-2013.

Figures provided in the RAF also indicate that the assessment schedule would produce surpluses of $4,937,000 in FY 2014-2015; $5,286,000 in FY 2015-2016 and $7,621,000 in FY 2016-2017. Given the increased cost that this proposal will impose on the regulated community, we question how the Department determined that the projected surpluses are appropriate.

2. Implementation procedures.

As noted above, this proposed rulemaking would establish an assessment schedule for institutions. It is our understanding that the Department currently assesses these institutions, but the current assessment system is not administered via any particular rule or regulation. As such, there is nothing in this proposal that deletes the current assessment system. We ask the Department to explain how it currently collects fees from institutions and how it will transition to the new assessment schedule. Will the Department discontinue its current assessment system? Assuming that this proposal is ultimately adopted as a formal regulation, how and when would the regulated community be notified of the change?

3. Section 5.5. Adjustments to assessments; invoicing. – Implementation procedures; Reasonableness; Need; Fiscal impact.

Subsection (a)

This section sets forth the criteria for adjustments to assessments based upon an optional adjustment for inflation which would be applied to all institutions. It allows the Department to increase the amount of the assessment up to the increase in the Consumer Price Index or other similar index published by the United States Department of Labor Bureau of Labor Statistics, if the projected assessments are insufficient to provide for the Department's budget due to inflation.

We have several questions on how this provision will be implemented and why the Department believes this approach is reasonable.

- First, what safeguards are in place to ensure that the need for additional funding is based on inflation? Do the Pennsylvania General Assembly and the budgetary process have any input or oversight on whether an adjustment is needed?
- Second, will the Department notify the regulated community in advance about the imposition of the inflation adjustment? How and when would the regulated community be notified of the inflation adjustment?
- Third, how often are the cited inflation indices updated? Do the inflation indices correlate to the semiannual assessment notices of this rulemaking?
- Fourth, how did the Department determine that the cited inflation indices are most appropriate for all Pennsylvania State-charted institutions?
- Finally, what criteria will the Department use when deciding which inflation index to use?

We ask the Department to respond to these questions and to adjust the final-form rulemaking as it deems appropriate to provide for fair and uniform administration of adjustments of assessments.

Subsection (b)

This subsection allows for an optional adjustment to be applied only to specific institutions based upon their Uniform Financial Institutions Rating System or Uniform Interagency Rating System composite rating. What is the need for this surcharge and why does the Department believe it is the most reasonable approach to assessing certain institutions? How did the Department determine that a 30 percent surcharge is appropriate for an institution with a composite rating of four and that a 50 percent surcharge is appropriate for an institution with a composite rating of five?

In addition, we note that this subsection provides the Department with discretion as to whether the surcharge will be imposed. What criteria will guide the Department in its determination that this surcharge is appropriate? Will the surcharge be imposed to close a budgetary gap or will it be imposed to encourage institutions to improve their composite ratings?

4. Section 5.6. Implementation schedule. – Reasonableness; Fiscal impact.

This section provides for a phase-in of the new assessment schedule; however, the phase-in only applies to banks, bank and trust companies, saving banks, savings associations and trust companies. The Department notes that the phase-in will not apply to credit unions because the collective impact of the assessments on the budgets of credit unions would be modest. A commentator has asked the Department to consider the merits of imposing the new assessment schedule on an incremental basis for credit unions with larger assets. As the Department prepares the final-form rulemaking, we ask it to consider the recommendation of the commentator as a way to lessen the immediate fiscal impact it would have on larger credit unions.