

NORTH CAROLINA BANKERS ASSOCIATION

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May 16, 2005

DELIVERED VIA E-MAIL

FFIEC
Program Coordinator
3501 Fairfax Drive, Room 3086
Arlington, VA 22226

Re: Limitation of Liability and ADR Provisions
in External Audit Engagement Letters
70 Fed. Reg. 89, 24576 (May 10, 2005)

Ladies and Gentlemen:

The North Carolina Bankers Association (NCBA), which is a trade association representing 141 banks, savings institutions, and trust companies headquartered or doing business in North Carolina, is pleased to have this opportunity to comment on the proposed interagency advisory published on May 10th by the Federal Financial Institutions Examination Council (FFIEC). The advisory, which would be issued jointly by the Federal Reserve, FDIC, NCUA, OCC, and OTS (collectively, the Agencies), calls attention to the use of limitation of liability and certain alternative dispute resolution (ADR) provisions in external audit engagement letters. If adopted, the advisory would notify financial institutions that such agreements raise safety and soundness concerns and that entering into the agreements is an unsafe and unsound business practice.

On behalf of our members, the NCBA would like to express support for the Agencies' efforts to maintain the objectivity and impartiality of external audits. Auditors who are shielded from responsibility behind limitation of liability provisions may have a reduced incentive to conduct thorough reviews. This runs counter to the whole reason for having independent audits performed in the first place. The NCBA, therefore, shares the Agencies' view that a uniform policy needs to be in place which clearly sets out that limitation of liability provisions in external audit engagement letters should not be entered into by financial institutions.

Although we strongly support the advisory's objective, we would like the Agencies to examine a few aspects of the proposal. First, the Agencies suggest that financial institutions closely examine all ADR agreements in external audit engagement letters and avoid agreeing to those which incorporate limitation of liability provisions. While we recognize that financial institutions must critically examine the ramifications of ADR provisions, the proposed advisory is unclear on which types of ADR provisions would still be permitted. Any examples or further explanation that the Agencies can provide would be appreciated. Our second concern is with the assertion made in the proposed advisory that financial institutions should seek to nullify limitation of liability provisions in existing agreements. Such action may not be possible and financial institutions and auditors may become involved in costly and time-consuming litigation. Therefore, we ask the Agencies to further consider the ramifications of that recommendation. Finally, we ask the Agencies to provide further information on whether the advisory would extend beyond financial statement audits. Current information leads us to believe that it would also extend to audits of internal controls, but we ask that the Agencies make this clear in any final version of the advisory.

The North Carolina Bankers Association appreciates the opportunity to submit these comments. If you have any questions, then please contact the undersigned.

Sincerely,

Nathan R. Batts
Associate Counsel