

Don't handcuff judgment

The thing that most frustrates bankers about the overlapping realms of regulation and supervision is not the compliance part, difficult as that is. It's the usurping of their judgment. Unnecessary rules and inflexible assessments hand over judgment to the keepers of the rules, so that even when there is wiggle room, bankers' hands are tied.

This frustration comes out in this month's cover profile of community banker Bill Grant, CEO of First United Bank & Trust, Oakland, Maryland (p. 26). He makes the case that bankers should be allowed to work with troubled borrowers and not be forced to "play hard and fast" with them because of regulatory pressure. The result is that too many small businesses are forced to close their doors.

Grant acknowledges that sometimes a borrower is too far gone to save. But for many, some flexibility would allow them to return to health.

Rules are a poor substitute for good judgment. They proliferate because human beings don't all have the same capacity for good judgment and don't always use it when they do. And, of course, a small minority deliberately do bad things. This brings all manner of difficulties, prompting policymakers to attempt, in effect, to force good judgment by creating rules that embody their view of what is right. (A judgment of its own.) Some rules are good, but far more get way "into the weeds."

In a banking context, many people would say it makes sense to have a regulation prohibiting mortgage lenders from extending credit to people who can't afford the loan. Who could argue with such a rule?

But a regulation governing ability to repay shifts the judgment of that ability from the lender (and the borrower) to the writers and enforcers of the rule. Who is closer to the situation?

The unintended consequence will be for lenders to decide that they don't want to put their fate in the hands of a rule enforcer—good intentioned though that person may be—and so they refrain from making any but the safest loans.

Bill Grant says in the cover story, "I wish there was some kind of a mechanism for the lead examiner to spend two or three days out of the bank, talking directly to the bank's customers." That would help her or him get a better understanding of the situation.

Grant's suggestion gets to a fundamental truth—we learn the most from experience.

As beneficial as his idea would be, people still have to get over the idea that every bad result requires a law or regulation to prevent it from ever happening again. Despite all the laws on the books (and often because of them), people will make mistakes. Take that possibility away and you take away a primary component of good judgment—learning from our mistakes.

As for the truly bad people, or those who, for whatever motive, flagrantly ignore their better judgment, every civilized

nation has a core set of laws in place to hold them accountable. Beyond that, the urge to regulate everything will only produce results that are worse than those that the regulations seek to prevent. •

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