May 6, 2024

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218,
Washington, DC 20219

Ann E. Misback, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Attention: Comments/Legal OES (EGRPRA)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996: Federal Reserve Docket No. OP–1828; RIN 3064–ZA39; Docket ID OCC–2023–0016

Dear Sir or Madam:

As part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), 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(FDIC) (hereinafter collectively referred to as the "Agencies") are reviewing Agency regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies. The Agencies divided their regulations into twelve categories. Over the next two years, the Agencies will publish four Federal Register documents requesting comment on multiple categories. This letter responds to the first request for comments from the Agencies and concerns the following three categories of banking regulations: Applications and Reporting, Powers and Activities, and International Operations.

The EGRPRA Review Process

EGRPRA requires the Federal Financial Institutions Examination Council and the Agencies to review their regulations every ten years to identify any outdated or otherwise unnecessary regulatory requirements for their supervised institutions. This is the third iteration of the EGRPRA review--the first two completed their reviews in 2006 and 2016 and also took two years to complete.

As we noted in a previous letter to the Agencies, the reviews in 2006 and 2016 resulted in recommendations that provided little substantive regulatory relief for community banks. Consolidation within the industry, acquisitions of community banks by credit unions, and a small number of de novo bank applications are symptoms of the underlying problem: that the cumulative impact of regulatory burden on community banks is overwhelming the industry, and causing long-term damage to the communities that depend on these vitally important local resources.

The Agencies need to take this new EGRPRA review much more seriously since the community banking industry is being crushed by regulation and is at a crossroads. Regulatory burden has grown exponentially to the point where 1000-page proposals are becoming routine. For example, capital regulations with their forever changing risk weights and requirements have never been so complicated and the recent final rule on the Community Reinvestment Act was nearly 1500 pages long. This is despite the fact that the Agencies say they are interested in reducing regulatory burden.

Since the experience of the last two EGRPRA reviews have shown that the Agencies cannot objectively evaluate the regulatory burden of their own regulations, we recommend that the Agencies collectively hire an independent outside consultant to quantify the current regulatory burden on community banks. Such an assessment should include all federal banking regulations that community banks are subject to including those of the CFPB (even though the CFPB regulations are not within the scope of the EGRPRA review) and should be calculated for community banks of different sizes, i.e., those between $100 million-$500 million, $500 million to $1 billion, etc. The burden should be quantified or expressed in a simple, straight forward way, (i.e. as a percentage of a bank's gross or net income or as a percentage of bank's assets) so that it will be understood by outside stakeholders and can serve as a baseline for any future burden assessments.

The FDIC conducted a study of regulatory burden as part of its 2012 Community Bank Study. The agency interviewed a number of community banks—all of whom talked about the crushing burden of regulation—but the FDIC refused to quantify the total regulatory costs, concluding that it would be too difficult. In 2020, when the FDIC interviewed community bankers as part of the Community Bank Study of that year, the FDIC said:

Bankers have sometimes characterized the regulatory costs they incur as being difficult to attribute to any one set of rules, but as the cumulative effect of many rules. ***The review in this chapter and its appendix of a partial list of regulatory actions taken by six federal agencies (often implementing statutory mandates from Congress) from 2008 through 2019 makes clear that merely keeping current on banks' regulatory requirements as they evolve cumulatively through time is a daunting task for anyone, and certainly for a small bank with modest staff and resources. Regulatory compliance costs may be one of a number of factors contributing, for example, to higher rates of exit from the banking industry by community banks; to an apparent increase in the target asset size of new small banks; or to a pronounced increase in the proportion of small residential mortgage lenders that are reducing their residential mortgage holdings.***

Both of these FDIC community bank studies acknowledged that (1) the regulatory burden is too high and is adversely impacting community banking and (2) the value in having the Agencies properly quantify the total regulatory burden before issuing any more regulations. We believe that quantifying the total regulatory burden of community banks would not be nearly as difficult for the FDIC as, for instance, calculating the potential losses to the Deposit Insurance Fund from a bank failure and could be calculated within a range of estimates. Both the Federal Reserve and the FDIC with their staffs of economists and statisticians have the resources and the expertise to accurately measure regulatory burden on a regular basis but lack the motivation to do so.

While we applaud the Agencies for their intention to hold EGRPRA outreach meetings, we recommend that they go further than they have done at past EGRPRA review meetings and hold at least two outreach meetings in every region of the country. At each outreach meeting, we hope that community banks will be invited to actively participate at these meetings and will be asked to testify to the current regulatory burden. These outreach meetings should be streamed in real-time over the internet and we hope at each meeting, there will be regulators from each Agency who can speak on behalf of any regulation in question.

The Agencies also should set up an EGRPRA.gov website as they have done previously. On the website, the Agencies can post the comment letters they receive, post the notices that are published in the Federal Register, and list the regulations that bankers mention the most as being outdated, unnecessary and unduly burdensome. There could be a top ten list of the most burdensome regulations which would include those regulations that are mentioned the most at the outreach meetings and in banker comment letters. The EGRPRA.gov website could also post notices about the outreach meetings and summaries of each meeting.

There should also be an overall director of the current EGRPRA interagency review process—an EGRPRA czar—who has a strong commitment to reducing unnecessary and unduly burdensome regulation and who can, in certain situations, overcome the objections of individual agencies to specific recommendations and resolve interagency disputes. Too often during the last two EGRPRA review processes, burden reducing recommendations were rejected because of the objection of one agency or because the Agencies could not achieve a consensus. The director or EGRPRA czar should have the authority to overrule such objections where it is clear that the regulation is unduly burdensome.

Finally, we urge the Agencies to conduct a thorough review of their past assessments of regulation under the Paperwork Reduction Act of 1995 and the Regulatory Flexibility Act. ICBA believes these assessments have consistently understated the regulatory burden of new regulation on community banks. For example, in 2023, the National Federation of Independent Business reviewed comment letters from the Office of Advocacy of the U.S. Small Business Administration, the independent office responsible for overseeing compliance with the Regulatory Flexibility Act. They found 28 instances where the Office of Advocacy cited agencies for noncompliance with the Regulatory Flexibility Act, mainly because the agencies were misrepresenting the costs on small businesses from regulation. ICBA believes that with the help of an independent outside consultant, the Agencies could review their past assessments under the Regulatory Flexibility Act and the Paperwork Reduction Act of 1995 to see if they have accurately determined regulatory burden and could make changes pursuant to the recommendations of the consultant.

Recommendations Concerning Applications, Reporting, and Activities

ICBA's specific burden reducing recommendations regarding Applications and Reporting regulations and Powers and Activities regulations are described below. Our focus is on call report simplification, streamlining the de novo bank applications, changes to the Small Bank Holding Company Policy Statement, and expedited procedures under the Bank Merger Act. We will not be commenting on regulations regarding International Operations.

Call Report Simplification

The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (referred to by many banking experts as "S. 2155") required the Agencies to issue regulations that allow for a reduced reporting requirement for a covered depository institution when the institution makes the first and third report of condition for a calendar year. Section 205 of S. 2155 defines ''covered depository institution'' as an insured depository institution ''that— (i) has less than $5,000,000,000 in total consolidated assets; and (ii) satisfies such other criteria as the [agencies] determine appropriate.' Therefore, with the passage of S. 2155, Congress recognized the unreasonable burden the call report places on community banks and directed the banking agencies to provide relief. Unfortunately, the Agencies' implementation of Section 205 failed to meet congressional intent and was a significant disappointment to community banks.

In 2019, in response to the mandate of Section 205 of S. 2155, the Federal Financial Institution Examination Council (FFIEC) implemented a short form community bank call report, the FFIEC 051 reporting form, that included the elimination of certain reporting elements. While the FFIEC 051 did eliminate 37% of the data items required to be reported by the longer form FFIEC 041 as trumpeted by the Agencies, unfortunately, those data items that were eliminated did not apply to most community banks. Consequently, the regulatory relief for community banks was not significant. Additionally, the FFIEC promised in the future that it would consider the removal of data items that the banking agencies do not need to maintain their safety and soundness supervisory activities. Instead, recent expanded use of the community bank call report as an information gathering tool for consumer protection regulation has increased regulatory burden and diminished the use of the call report as an effective safety and soundness measurement metric.

While past efforts by the Agencies to streamline the call report are appreciated and supported by ICBA, the Agencies need to do more. They need to focus their attention on the frequency of items reported by community banks and whether the reporting of certain schedules on a quarterly basis adds meaningful value in the determination of the safety and soundness characteristics of a community bank.

Regulatory reporting through the call reporting process should be tailored to the size and complexity of the financial institution. Smaller banking organizations like community banks should require very little quantitative reporting requirements simply because their community-driven business models keep them from taking excessive risk or acquiring leverage exposure that is difficult to unwind in a financial downturn. Community banks with less than $1 billion in assets must complete 51 pages of call report forms each quarter. Banks above this threshold must complete 80 pages of forms each quarter. Ever-expanding schedules fail to support the utility of the call report as a vital safety and soundness metric for prudential regulators.

ICBA conducted a call report survey and found that the annual cost of preparing the call report has increased for 86 percent of survey respondents over ten years. The call report now represents a significant regulatory burden that diverts critical staff from completing other important tasks within the institution.

Regulators must provide real relief for community banks by adopting a true short-form call report—something that is much simpler than the FFIEC 051**. Highly rated and well-capitalized community banks should file (1) a short-form call report for the first and third quarters of each calendar year and (2) a more complete call report at mid-year and year end. The short-form call report should only include the income statement, balance sheet, and statement of changes in shareholders' equity, which provides the information needed by regulators to provide prudent oversight over such short reporting intervals.** While the full call report should include more information than the short-form report, it should be much more streamlined than the FFIEC 051. **Additionally, "covered institutions" (or those institutions that are eligible to file the short-form report) should include insured depository institutions that have less than $10,000,000,000 in total consolidated assets.**

ICBA urges the Agencies and the FFIEC to convene another call report study to determine ways to further streamline the call reporting process for community banks as they committed to do so following the passage of S. 2155. The implementation of the short form call report FFIEC 051 was not an adequate or meaningful response to the mandate of S. 2155.

Small Bank Holding Company Policy Statement

Appendix C of Regulations Y includes the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (Policy Statement). Currently, this Policy Statement applies to bank holding companies with proforma consolidated assets of less than $3 billion that (1) are not engaged in any nonbanking activities involving significant leverage and (2) do not have a significant amount of outstanding debt that is held by the general public.

S. 2155 mandated that the Agencies raise the threshold to $3 billion in assets and the Agencies amended the Policy Statement in 2019 to comply with the mandate. **ICBA strongly believes that the asset threshold under the Policy Statement should be raised to $10 billion in assets. In addition, we recommend that the debt-to-equity ratio threshold of 1:1 be increased to 2:1.** Increasing the exemption to $10 billion would reduce the regulatory burden on many community banks and would improve their ability to sell their stock locally, keeping the financial decisions affecting the community in the local area.

Access to capital for community banks is as difficult today as it was ten years ago. Particularly in rural areas, the public capital markets remain unavailable or unattractive to many community banks and holding companies. Community banks have had to rely more on existing shareholders, directors and insiders for capital raises and less on new investors, including institutions and private equity investors. Allowing a larger number of community bank holding companies to issue debt on an unconsolidated basis will permit them to support the capital needs of their banking subsidiaries. We also believe the 2:1 debt to equity ratio is a reasonable leverage ratio and would facilitate the raising of capital at the holding company level.

De Novo Bank Applications

ICBA appreciates the efforts that the FDIC staff has taken to encourage de novo bank applications. However, the number of de novo applicants remains so low particularly in comparison to twenty years ago that one must conclude that some of the problem must be due to the application process. Furthermore, we continue to hear from our members and others confirmation of that fact, i.e. FDIC policies and practices are inhibiting the formation of de novo institutions.

As of April 23, 2024, there were eighteen pending deposit insurance applications from de novo institutions. Three of these are ILC applications and two are for trust companies or international banks. Only a handful appear to be applications from traditional community banks. We have heard from potential applicants that the increasingly lengthy and uncertain application process serves as a deterrent to forming de novo banks. Apparently, some would-be applicants are overwhelmed by the uncertainty of approval and timely processing of the applications, and thus decide not to take the considerable risk of subjecting themselves to those uncertainties. The lengthy business plan is the chief complaint.

Given the dearth of de novo bank applications from community banks, ICBA urges the FDIC to streamline the application process further and consider innovative ways to encourage applicants. For instance, we believe that the initial application process could be simplified and completed over the internet with guidance from the FDIC. This way, applicants could complete the application process without having to hire legal specialists or consultants.

ICBA supports a flexible and tailored supervisory policy with regard to de novo banking applicants that is based on the pro forma risk profile and business plan of the applicant. To ease the burden of raising capital, ICBA recommends that the FDIC consider phasing in its capital requirements for de novo banks, particularly for minority banks and banks in rural and underserved areas where access to capital is limited. At present, the FDIC expects the initial capital of each de novo institution to be sufficient to provide a tier-one-capital-to-assets leverage ratio of not less than 8 percent throughout the first three years of operation. This means that the de novo institution must have capital on day one equal to 8 percent of what it projects its assets will be three years from the opening date. ICBA recommends that the FDIC phase in the capital requirements so that the bank would only be required to have 6 percent capital on day 1, 7 percent at the beginning of the second year, and 8 percent at the beginning of the third year. This would give the community bank some extra time to meet current, strenuous capital requirements. We also believe there should be tax incentives to support a de novo applicant.

Bank Merger Act

ICBA will shortly be commenting on the FDIC's Proposed Statement of Policy on Bank Merger Transactions. While we generally like some parts of the proposal, the FDIC's proposal should be less restrictive when applied to the smallest community banks and more restrictive when applied to the banks that pose systemic risk or are "too big to fail." The FDIC should amend its bank merger framework to ensure mergers among the smallest community banks can transact with speed and regulatory scrutiny that is proportionate to their small size, relative non-complexity, and lack of systemic risk.

ICBA urges the FDIC to create a small bank de minimis exception to its bank merger framework to expedite agency review of mergers among small banks and reduce associated transaction costs and burden. Under this exception, the FDIC should streamline its review of small bank mergers by subjecting these transactions to shorter agency review periods and adopting a presumption that these transactions do not create monopolies or anticompetitive effects. We suggest the FDIC apply this small bank de minimis exception to all proposed mergers where both the acquiring and acquired bank have $1 billion or less in assets, or in the alternative, have $750 million or less in assets and are therefore "small businesses" as defined by the Small Business Administration ("SBA") Small Business Size Standards.

Removing some of the existing barriers for small bank mergers by creating a small bank de minimis exception will help small community banks explore moderate and responsible growth through merger activities and achieve economies of scale that will result in more efficient banks, a sounder banking system, and a healthier economy. In light of the important services community banks provide to rural and underserved markets, and because no individual community bank holds enough nationwide market share to pose systemic risk or be considered a monopoly, the FDIC's bank merger framework should relieve small banks from the same rigorous framework it applies to large institutions that control billions of dollars of assets.

Credit Union Competition in Mergers

The Agencies also request comments on whether any of the regulations in these categories create competitive disadvantages for one part of the financial services industry compared to another. In the merger area, community banks are at a competitive disadvantage because credit unions can leverage their tax-exempt status to outbid them. Consequently, larger, out of market credit unions are displacing smaller, locally based community banks creating an environment that is less competitive, has more systemic risk, and offers fewer choices for consumers and small businesses. So far this year, more than a quarter of all bank acquisitions were from tax-exempt credit unions and it looks like the pace of credit union acquisitions of banks will increase.

It is not just their tax-exempt status that gives credit unions a competitive advantage over community banks. Because they are not subject to the Community Reinvestment Act, they do not have to be concerned with the CRA impact from an acquisition which gives them more flexibility with regard to the banks they acquire and simplifies the whole regulatory process. Community banks report that credit unions are inflating the purchase price of community banks and are consistently outbidding them whenever there is a bidding contest. Unfortunately, because of the legal roadblocks created by the National Credit Union Administration, it is almost impossible for a community bank to acquire a credit union which explains why there has been very few acquisitions of credit unions by banks.

The Agencies need to address this competitive disadvantage. Purchases of community banks by credit unions harm taxpayers because they convert taxpaying community banks into federally tax-exempt non-profits. These acquisitions also harm low- and moderate- income (LMI) consumers because the combined institution becomes exempt from the Community Reinvestment Act (CRA), which leads to reduced transparency and a decreased incentives to lend in LMI census tracts. Community banks can compete effectively with credit unions and serve their customers and communities as long as there is a level playing field.

Conclusion

This third review of regulations under EGRPRA is coming at an important time for community banks because their existence is being threatened by the cumulative weight of regulation. Every time the Agencies issue another rule, it negatively impacts the franchise value of community banks and forces many of them to reconsider their future. The Agencies need to realize the existential threat that regulation poses to the community banking industry and the urgent need to reduce it in a meaningful way.

The EGRPRA review process could reduce regulation for community banks but only if the Agencies take it seriously. Hiring an outside consultant to help with quantifying the regulatory burden would be an important first step. Holding more outreach meetings, appointing an EGRPRA czar, and reevaluating the burden estimates made under Paperwork Reduction Act and the Regulatory Flexibility Act would also be helpful. Ultimately, though, the adoption of all these measures, while helpful, will not reduce regulatory burden unless there is a strong and sustained interest and commitment by the Agencies to do so. So far, we have not seen that interest or commitment.

ICBA appreciates the opportunity to comment on the first notice that was published by the banking agencies under EGRPRA to help identify those regulations in the first three categories of regulations that are outdated, unnecessary or unduly burdensome and to discuss the EGRPRA process and the regulatory burden on community banks. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,

/s/Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel
Independent Community Bankers of America