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September 2, 2014

Robert deV. Frierson, Secretary
Board of Governors
Federal Reserve System
20th Street and Constitution
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Docket No. FFIEC-2014-0001; Fed Docket No. OP-1491;

Dear Sirs or Madam:

The OCC, the Federal Reserve Board, and the FDIC are conducting a review of the regulations they have issued to identify outdated, unnecessary or unduly burdensome regulation on insured depository institutions. This review is required under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) and will be conducted over a two year period. The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the first notice that was published by

¹ *The Independent Community Bankers of America® (ICBA), the nation's voice for more than 6,500 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.*

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the banking agencies under EGRPRA to help identify those regulations in the first three categories of regulations that are outdated, unnecessary or unduly burdensome.

Under EGRPRA, the banking agencies will review more than a hundred subject areas of regulations. The banking agencies have grouped these regulations into twelve regulatory categories. Over the next two years, the agencies plan to publish four Federal Register notices, each addressing one or more categories of rules. Our understanding is that the CFPB will not be a part of this process, but is required to review its significant rules and publish a report of its review no later than five years after they take effect.

This letter will comment not only on the first three categories of regulations—Applications and Reporting, Powers and Activities, and International Operations—but will also comment generally on the EGRPRA process and also the severe regulatory environment that community banks now face.

EGRPRA Process

ICBA and its members were very actively engaged during the first EGRPRA review process which was conducted from 2004 to 2006. ICBA members and staff attended many of the outreach meetings and extensively commented on all six of the published EGRPRA notices. According to the final EGRPRA report that the FFIEC published in the Federal Register and sent to Congress in 2007², there were sixteen EGRPRA outreach sessions around the country involving more than five hundred participants, most of whom were community bankers. At the St. Louis outreach session, for instance, there were almost one hundred community banks represented. The agencies received 850 letters from bankers, consumer and community groups, trade associations, and other interested parties in response to their comment requests.

Despite the strong involvement and input from community banks during the first EGRPRA review process, community banks and the ICBA were deeply disappointed and disillusioned with the outcome. Since few substantive regulations were repealed, eliminated or substantially amended by the banking agencies, many community bankers have concluded that EGRPRA is no more than a “check the box” regulatory process. On the major issues raised by the bankers in 2004 to 2006, such as repealing the right of rescission under the Truth in Lending Act, raising the \$10,000 Currency Transaction Report threshold, or reducing disclosures under the Home Mortgage Disclosure Act, the banking agencies either rejected the recommendations outright or deferred action until further study could be completed.

ICBA members operate 24,000 locations nationwide, employ 300,000 Americans and hold \$1.3 trillion in assets, \$1 trillion in deposits and \$800 billion in loans to consumers, small businesses and the agricultural community. For more information, visit www.icba.org.

² See the Federal Register, Volume 72, No. 211 on November 1, 2007.

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Overall, the banking agencies believed that their first EGRPRA review had been a success because they were able to eliminate some duplicative regulation, or accomplish such things as redesigning their financial institution letters, or streamlining their branch application procedures. However, these changes hardly made an impact on the overall regulatory burden that now confronts community banking.

If the new EGRPRA process is to have any chance at success, there must be a strong commitment by the heads of the banking agencies to do what is necessary to eliminate regulation that is outdated, unnecessary or unduly burdensome. The EGRPRA statutory mandate requires the agencies to go beyond merely streamlining regulations, tweaking certain regulations, eliminating duplication, or deferring action until some further interagency study can be completed. Rather, the mandate requires the agencies to thoroughly review each regulation and eliminate it if it is outdated, unnecessary or unduly burdensome.

This will require the agencies to consider the costs and benefits of each regulation and to carefully consider the input they receive from community bankers. Furthermore, even if there are some benefits to having a regulation, it should be eliminated under the EGRPRA process if it can be shown to be unduly burdensome.

Furthermore, ICBA urges the banking agencies to hold at least six outreach meetings around the country to gather the input and testimony of community banks. At these outreach meetings, community bankers should be allowed to discuss the overall regulatory burden and how it could be reduced. For those bankers that are unable to attend the outreach meetings, they should be permitted to participate remotely by phone. The best way to truly assess the costs and benefits of banking regulation is to hear the personal experiences and testimony of bankers.

The banking agencies also should set up an EGRPRA.gov website as they did during the first review. 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 or 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.

Finally, there should 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 EGRPRA review process, burden reducing recommendations were rejected because of the objection of one agency or because the agencies could not achieve a consensus. This director or EGRPRA czar

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should have the authority to overrule such objections where it is clear that the regulation is unduly burdensome. There will always be someone who can find some reason to preserve a regulation so, to ensure an effective process, there should be a director who can overcome such objections.

The Overall Regulatory Burden on Community Banks

In the preface to the last EGRPRA report in 2007, John Reich, who at that time was not only the Director of the Office of Thrift Supervision but also the leader of the interagency EGRPRA program, warned of the consequences to community banking if the regulatory burden was not reduced. He said:

“Financial institutions of all sizes suffer under the weight of unnecessary regulatory burden, but small community banks unquestionably bear a disproportionate share of the burden due to their more limited resources. While it is difficult to accurately measure the impact regulatory burden has played in industry consolidation, numerous anecdotal comments from bankers across the country as well as from investment bankers who arrange merger and acquisition transactions indicate it has become a significant factor. Accordingly, I am deeply concerned about the future of our local communities and the approximately 8,000 community banks under \$1 billion in assets...”

Since John Reich’s statement in 2007, the number of community banks has dropped to about 6,500 due mainly to consolidation, and the amount of regulation has grown exponentially.

Several recent studies have attempted to quantify the overwhelming regulatory burden on community banking. For instance, according to a recent KPMG Banking Industry Outlook Survey³, sixty percent of bankers said that regulatory requirements account for as much as 10 percent of their total operating costs and that 22 percent said that complying with the regulation is responsible for as much as 11 to 20 percent of their total operating costs. As KPMG concludes, “This significantly adds to the pressure that banks are already feeling to keep costs down to deliver the returns investors expect while also raising the higher levels of capital now required.”

The Mercatus Center at George Mason University recently produced a high quality empirical study⁴ on the impact of regulations on community banks since the Dodd-Frank Act was enacted in 2010. The study, which is based on a survey of approximately 200 community banks in 41 states with less than \$10 billion in assets, is largely consistent with the anecdotal evidence. Broad findings from the study include:

³ The KPMG study can be found at:

http://www.kpmginfo.com/industryoutlooksveys/2014/pdfs/KPMGBankingIndustrySurvey_172414.pdf

⁴ “How are Small Banks Faring Under Dodd-Frank?” Hester Peirce, Ian Robinson, and Thomas Stratmann. Mercatus Center Working Paper. February 2014.

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- **Additional costs.** Approximately 90 percent of respondents reported that compliance costs have increased since 2010. 83 percent reported that they had increased by more than 5 percent.
- **Outside consultants.** More than half of surveyed community banks (51%) anticipate engaging with outside consultants in connection with the Dodd-Frank Act requirements, and an additional 21 percent are unsure.
- **Additional compliance personnel.** Since 2010, the respondent banks said they have hired additional compliance/legal personnel. 27 percent of respondents plan to hire additional compliance/legal personnel in the next 12 months, and an additional 28 percent are unsure. The survey also finds that employees not exclusively dedicated to compliance, including CEOs and senior managers, are forced to spend more time on compliance issues.
- **Regulation is driving consolidation.** 26 percent of respondents anticipate that their bank will engage in merger activity in the next five years, and another 27 percent are unsure. 94 percent of banks anticipate further industry consolidation.

The anecdotal evidence is also compelling. ICBA established an EGRPRA website so that its members could give some feedback online about EGRPRA and regulatory burden. One banker expressed the frustrations of many community banks with this comment:

“Banking has become the most highly regulated industry in the world. Legislation and regulation created to address problems caused by the largest banks has been foisted upon all banks. As such, we are seeing the life-blood sucked out of our local communities. Meanwhile, un-taxed credit unions, already held to a much lower standard of compliance, are allowed seemingly unbridled growth. They now boast membership exceeding 100 million... When coupled with the Farm Credit System loaning any amount to anyone at any rate they choose, you have a serious problem for the continued viability of community banking in this country. Meanwhile, "back at the ranch", you have community bankers, many of whose institutions have been in business for 100+years, seriously considering folding up their tent. I would add that the creation of the Consumer Financial Protection Bureau, with its annual payroll now exceeding \$200 million, will do nothing but increase costs to consumers and make the problems worse. We need less regulation, not more; less government, not more; more action and less talk.

The Mercatus Study noted above also reported narrative comments from respondents about regulation. Here are a few examples:

- “We don’t have the number of employees or the financial resources to keep up with [new] rules ... Why make it harder for community banks to do business and survive? We fill a niche that larger banks can’t and won’t.”

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- “Community banks that know their customers will struggle to be able to continue to lend to good, long-term customers.”
- “Many concerned, conscientious community bankers are selling out or just retiring due to the maddening pace of illogical and unnecessary regulation. Not one of the regulations we’ve seen would have done anything to prevent the 2008 collapse.”

These comments, offered anonymously by bankers, illustrate how increasing regulatory burden is fundamentally changing the nature of the business of community banking.

Community banks play a crucial role in the economic life of rural areas and small communities passed over by larger banks. The credit and other financial services they provide in these communities will help advance and sustain the economic recovery and ensure that it reaches every corner of the country. Community banks are responsible for 60 percent of all small business loans under \$1 million. As the economic recovery strengthens, small businesses will lead the way in job creation with the help of community bank credit.

The role of community banks in advancing and sustaining the recovery is jeopardized by the increasing expense and distraction of regulation drastically out of proportion to any risk they pose. **Community banks didn’t cause the recent financial crisis, and they should not bear the weight of new, overreaching regulation intended to address it.**

ICBA urges the regulatory agencies as part of the EGRPRA process to conduct their own empirical study of the regulatory burden on community banks to quantify the burden and confirm what the KPMG, Mercatus and other studies are showing—that the burden is significant and is driving community banks out of the business of banking. Such a study could also identify those regulations that are the most burdensome. The FDIC attempted to conduct such a study as part of its 2012 Community Bank Study. In the appendix to that study, the FDIC summarized its interviews with community bankers concerning regulatory compliance costs but failed to quantify the costs, after concluding it would be difficult.

We urge the FDIC, the OCC, and the Federal Reserve to confirm what community bankers are also saying anecdotally—that each new regulation is not only reducing the franchise value of their banks but also impairing the ability of their banks to lend to the communities they serve.

Specific Comments on the Three Categories of Regulations

ICBA has a number of specific burden reducing recommendations regarding the first two of the three categories of regulation that the agencies have requested comments on—Applications and Reporting and Powers and Activities. We have no comments on International Operations regulations.

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Call Report Burden. With 80 pages of forms to complete and over 670 pages of instructions, the call report has become a significant regulatory burden for community banks to prepare. In fact, as new regulations are issued and old ones are amended, the call report just gets more complicated and more burdensome to prepare. From that perspective, the call report really has become a symbol of the overall regulatory burden community banks currently experience.

For instance, the call report has grown from 18 pages in 1986 to 29 pages in 2003 to nearly 80 pages today! Just recently the regulators proposed another 57 pages of instructions because of the new Basel III regulatory capital framework. The call report—which community banks submit every 65 business days—has more pages than the typical U.S. community bank has employees. Community banks have very limited resources available to tackle the challenges faced when trying to meet ever changing regulatory reporting requirements that do not properly consider the size and complexity of the institution.

ICBA's recently released its 2014 Community Bank Call Report Burden Survey.⁵ According to the survey, 86 percent of community bank respondents said that the annual cost of preparing the report has increased over the past ten years. Further, 98 percent of respondents said ICBA's proposed short-form call report, which qualifying community banks would be able to submit for the first and third quarters of each year, would reduce their regulatory burden. Seventy-two percent said the burden reduction would be substantial. The survey also showed that over the last ten years the number of hours required to complete the call report and the resources involved with meeting reporting obligations has increased.

Recent expansions of the use of the call report as an information gathering tool for consumer protection regulation further damage the effectiveness of the information provided and the use of the report as a safety and soundness metric. ICBA notes that regulated credit unions are not required to produce anywhere near the level of detail that is required by community banks even though their depositors are offered the same levels of protection and they engage in similar and in some cases identical activities as community banks. For example, in the first quarter of 2014, the smallest community bank was required to submit a call report that is 80 pages in length while the largest credit union in the country with over \$58 billion in assets submitted a call report with only 28 pages.

ICBA believes that highly rated, well-capitalized community banks would benefit greatly from a call reporting structure that allows them to file a short-form call report covering the first and third quarters and a long-form call report for the

⁵ ICBA's 2014 Community Bank Call Report Burden Survey can be found at <http://www.icba.org/files/ICBASites/PDFs/2014CallReportSurveyResults.pdf>

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second and fourth quarters of each year. Preparers of community bank call reports believe that preparing a short-form call report with limited schedules in certain quarters would reduce the overall time required to meet call reporting obligations and reduce regulatory burden substantially. Without immediate relief for community banks that reduces the current regulatory burden including the increasingly taxing call report requirements, consolidation of community banks in the United States will occur at a rapid rate.

ICBA strongly urges the banking agencies to work actively together to amend the current call report burden by allowing community banks to make use of the short-form call report solution. With only approximately 60 business days between reporting periods, instituting the short-form call report solution will greatly alleviate limited community bank resources that would be better deployed meeting the needs of local communities without compromising on the valuable metrics needed to efficiently assess safety and soundness. ICBA is proposing that in the community bank's fiscal first and third quarters, the complete call report would be replaced by a short-form call report that includes only limited financial schedules such as the income statement, balance sheet, and statement of changes in bank equity capital. These schedules would provide the agencies with sufficient information to detect any significant changes in condition that might warrant additional follow up.

We also encourage the Federal Reserve to streamline the FRY-9 for shell holding companies of community banks. The current FRY-9 requires too much information in cases where the holding company has no other assets but the stock of the bank.

Small Bank Holding Company Policy Statement. Appendix C of Regulation Y includes the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (Policy Statement). This Policy Statement applies only to bank holding companies with pro forma consolidated assets of less than \$500 million 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.

ICBA strongly believes that the asset threshold under the Policy Statement should be raised to at least \$5 billion. In addition, we recommend the debt-to-equity ratio threshold of 1:1 be increased to 3:1. Increasing the exemption to \$5 billion would improve the ability of small local institutions to sell their stock locally, keeping the financial decisions affecting the community in the local area.

Access to capital for community banks has never been more difficult than it is today. Since 2007, the public capital markets have been either unavailable or unattractive to many community bank and holding companies. Many 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. Furthermore, many community banks will need to raise additional capital not only for business purposes but

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also to ensure compliance with regulatory requirements including the new Basel III requirements. Those community banks that have not redeemed their Troubled Asset Relief Program (TARP) or Small business Lending Fund (SBLF) securities, or that have been deferring dividends on their trust preferred securities, have additional reasons for needing capital.

Allowing a larger number of community bank holding companies to qualify under the Policy Statement (i.e., those with consolidated assets of up to at least \$5 billion) would make it easier for these community bank holding companies to issue debt and equity on an unconsolidated basis that could be used to support the capital needs of their banking subsidiaries or to redeem their TARP or SBLF securities. We also believe a 3:1 debt to equity ratio is a reasonable holding company leverage ratio and would also facilitate the raising of capital at the holding company level. Small savings and loan holding companies should also have the ability to benefit from using the Policy Statement.

De Novo Bank Applications. ICBA appreciates the meetings we have had with FDIC staff about de novo bank application process. However, we continue to hear from our members and others that FDIC policies and practices are inhibiting the formation of de novo institutions.

For example, it has been reported to us that the requirement that a state nonmember de novo bank is subject to FDIC approval for any material change or deviation in its business plan during the fourth through seventh years serves as a major deterrent to organizing groups and their efforts to raise sufficient capital in their communities. There are also reports that at pre-filing meetings with the FDIC, the organizers have been advised that they need to raise capital upfront in amounts sufficient to maintain a leverage ratio of at least 8 percent for a seven year period.

We have also heard from others 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.

Given the continuing dearth in de novo applications, ICBA urges the FDIC to streamline the application process. Furthermore, the FDIC should advise staff that meet with de novo bank applicants and process applications that it is not requiring initial capital to cover the full seven year period, that the application process will not overwhelm applicants, and that the FDIC will not question the judgment of the organizing group of the need for a de novo bank in the market unless it is clearly erroneous.

Also given the misperceptions surrounding the FDIC's policies and practices, **ICBA recommends that the FDIC issue a new Financial Institutions Letter or FIL to help**

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dispel misconceptions and reaffirm the FDIC’s support for the formation of de novo banks.

Simplification and Update of Regulation O. Federal Reserve Regulation O still continues to confuse community bankers. The rules on prior approval of extensions of credit, on additional restrictions on loans to executive officers, and the definition of what is an “extension of credit” need to be clarified and simplified. Furthermore, it is time to revisit some of the loan limits, such as the \$100,000 aggregate credit limit to executive officers in Section 215.5.

ICBA suggests also easing some of the requirements for community banks with CAMELS composite ratings of “1” or “2” and management ratings of not lower than “2.” We also think that the agencies should issue a Regulation O summary chart to capture the limitations on loans to various types of insiders in an easy comprehensive way, with cross references to Federal Reserve Regulation W.

Conclusion

ICBA hopes that this EGRPRA review process will be more of a success than the last one which failed to make any substantive changes to banking regulations. We strongly recommend that as part of the current EGRPRA process (1) the agencies hold at least six outreach meetings to solicit the comments and testimony of community banks to the regulatory burden, (2) the agencies establish an EGRPRA.gov website to post the comments received and list those regulations that community banks consider the most burdensome, and (3) establish an “EGRPRA czar” who could resolve interagency disputes over the regulations. But more importantly, a strong commitment at the top is needed to do what is necessary to eliminate regulation that is outdated, unnecessary or unduly burdensome. Otherwise, the whole EGRPRA process will be a meaningless, regulatory check-the-box exercise.

The overall regulatory burden has increased dramatically since 2007 when the last EGRPRA report was issued and when the EGRPRA director, John Reich, expressed his concerns about the future of community banking. We encourage the regulators to conduct their own empirical research confirming what other studies are showing—that community banks are exiting the business because the regulatory burden is so severe.

ICBA has a number of burden-reducing recommendations concerning the first two categories of regulations. With regard to call reports, we urge the agencies to adopt a streamlined call reporting system that would allow highly rated, well-capitalized community banks to file a short-form call report covering the first and third quarters and a long-form call report for the second and fourth quarters of each year. This would greatly reduce the call report burden.

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ICBA also recommends amendment of the Small Bank Holding Company Policy Statement so that bank holding companies with consolidated assets of up to \$5 billion could benefit from it. In addition, we recommend the debt-to-equity ratio threshold under the Policy Statement of 1:1 be increased to 3:1. Increasing the exemption to \$5 billion and easing the leverage ratio would improve the ability of small local institutions to sell their stock locally and would allow them to more easily issue debt at the holding company level to support the capital needs of their banking subsidiaries.

ICBA still hears from our members and others that FDIC policies and practices are inhibiting the formation of de novo institutions. We believe the process should be streamlined and urge the FDIC to issue a FIL to help dispel misconceptions and reaffirm the FDIC's support for the formation of de novo banks.

ICBA also supports the simplification of Regulation O and recommends that the requirements be eased for those community banks with high management and CAMELS ratings. Some of the loan limits should be reviewed and updated, and the regulators should issue a simplified summary of the regulation for community banks.

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

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