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August 31, 2015

Robert deV. Frierson, Secretary
Board of Governors
Federal Reserve System
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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 (EGRPA), Docket No. FFIEC-2014-0001; Fed Docket No. R-1510

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Reserve Board, and the FDIC are conducting a review of the regulations they have issued to identify those that are outdated, unnecessary or unduly burdensome for insured depository institutions.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

¹ The Independent Community Bankers of America®, the nation's voice for more than 6,000 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.

With 52,000 locations nationwide, community banks employ 700,000 Americans, hold \$3.6 trillion in assets, \$2.9 trillion in deposits, and \$2.4 trillion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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published by the banking agencies under EGRPRA regarding the regulatory categories of consumer protection, directors, officers and employees, and money laundering.

The EGRPRA Process

ICBA commends the banking agencies for the four outreach meetings they have held so far in Los Angeles, Dallas, Boston and Kansas City. These outreach meetings have been well attended and have discussed a wide range of burden reduction recommendations. The issues that community bankers keep bringing up include (1) call report reform and in particular, having a community bank short form call report, (2) a two-year exam cycle for well-rated community banks, and (3) increasing many of the dollar or asset threshold requirements under the Bank Secrecy Act and Community Reinvestment Act, and under the requirements for appraisals for real estate-related loans.

ICBA urges that these recommendations be implemented by the regulators or, in those instances where a statutory change is required, that the regulators recommend in their EGRPRA report to Congress that Congress adopt the change. In our first EGRPRA comment letter, ICBA called for (1) call report reform, (2) increasing the asset threshold under the Small Bank Holding Company Policy Statement to \$5 billion, (3) reducing the regulatory requirements for de novo banks, and (4) simplifying and reforming Regulation O.

In our second comment letter, we recommended updating Regulation D to allow up to ten transfers per month for a savings account or a non “transaction account.” ICBA also recommended that the reimbursement schedule in Regulation S be updated to reflect the true costs of complying with a document request from a governmental authority, and that extended hold notice requirements of Regulation CC be eliminated or substantially simplified.

With respect to the category of regulations dealing with capital, we recommended a more flexible and even-handed prompt corrective action (PCA) regime where small banks are treated the same as large banks. We also stated our serious concerns with Basel III risk based capital requirements. The implementation of the capital conservation buffer is especially troublesome, particularly because of the impact on Subchapter S banks. The regulators should allow for full inclusion of a community bank’s ALLL as regulatory capital regardless of the size of the allowance. Additionally, the first 1.25 percent of the allowance should be included in tier 1 capital.

With respect to the Community Reinvestment Act, ICBA recommended much higher asset thresholds for the definition of “small bank” and “intermediate small bank” to reflect consolidation in the community banking industry. ICBA also supports allowing community banks with assets up to \$1 billion or less that received an overall CRA rating

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of outstanding to be evaluated every five years and those with an overall CRA rating of satisfactory to be evaluated every four years.

We have stressed in our first two comment letters that if the new EGRPRA process is to be successful, 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. This goes beyond merely streamlining, tweaking regulations or eliminating duplication. Rather, the mandate requires the agencies evaluate the costs and benefits of each regulation and 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.

Specific Comments on the Three Categories of Regulations

ICBA has a number of specific recommendations regarding the three categories of regulation that are currently subject to comment—consumer protection, directors, officers and employees, and money laundering. ICBA surveyed its members to gather input on what recommendations they would make to reduce regulatory burden. We have included in this letter some of the comments we received from the survey.

Consumer Protection

It is unfortunate that most of the consumer protection regulations that community banks must comply with are not subject to review under EGRPRA since rulemaking authority for those rules has been transferred to the Consumer Financial Protection Bureau. For instance, regulations that were often mentioned by community bankers during the first EGRPRA process ten years ago, such as the right of rescission under the Truth in Lending Act or the information gathering requirements under the Home Mortgage Disclosure Act, are now off-limits under the current review process since rulemaking authority under those laws has been transferred to the CFPB. **ICBA recommends that the CFPB be part of the next EGRPRA process, so that the bulk of the consumer protection rules can be reviewed and commented on by the bankers at the same time that the safety and soundness regulations are reviewed and commented on.**

However, ICBA has comments on those few regulations that are considered “consumer protection” and that are still under the primary jurisdiction of the banking agencies.

Flood Insurance. Bankers often identify flood insurance requirements as a regulatory burden. The flood insurance rules create difficulties with customers, who often do not understand why flood insurance is required and that the federal government—not the bank—imposes the requirements. The government needs to do a better job of educating consumers as to the reasons for and requirements of flood insurance.

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For bankers, it is often difficult to assess whether a particular property is located in a flood hazard zone since flood maps are not easily accessible and are not always current. Even once a property has been identified as subject to flood insurance requirements, the regulations make it difficult to determine the proper amount, and customers do not understand the relationship between property value, loan amount and flood insurance level. Once flood insurance is in place, it can be difficult and costly to ensure that the coverage is kept current and at proper levels. As a result, many banks rely on third party vendors to assist in this process, but that adds costs to the loan. **Flood insurance requirements should be streamlined and simplified to be more understandable.**

The banking agencies should also consider amending the flood notice requirements. Currently, notices are required at each loan renewal, even if the loan renewal is with the same lender and the property in question is already covered by flood insurance. In these cases, the renewal notices serve no useful purpose.

Also, monitoring for flood insurance by the banking industry is outdated and burdensome. This monitoring process does not capture all properties affected, such as buildings without mortgages or buildings without seller bank financing. More properties would be captured if the task of monitoring for flood insurance was placed on the insurance industry. As one banker explained at an EGRPRA outreach meeting:

“Bank regulators are requiring us to assume responsibility for matters that should be assigned to FEMA's insurance agents....Banks complying with mandatory purchase obligations should be permitted to manage flood risk in the same manner as other property risks insured by hazard insurance policy. And due to the wording of the rules and the enforcement by examiners, we've become directly responsible for determining the insurable value of buildings and its contents forcing us to guess if the coverage is adequate based on the minimal information we have....-[D]ue to the enforcement burden being placed on banks, we often wind up being more knowledgeable than the agents about the rules and the coverage requirements. We should not be the insurance experts. Flood insurance should be handled like any other hazard insurance, and banks shouldn't be the gatekeepers on it.”

Fair Credit Reporting Act. Community banks are still concerned about the regulatory burden posed by the Fair Credit Reporting Act (FCRA) and the scams that often crop up during the dispute process. The FCRA establishes permissible purposes for banks to pull credit reports and also establishes standards to ensure the accuracy and integrity of information furnished to credit bureaus. Banks are required to send a number of notices, including risk-based pricing notices, notices regarding inaccurate information, and action notices. Community banks complain that they are often held to a higher standard under the FCRA than non-banks, since the regulators are continuously reviewing them for compliance. As one banker remarked, *“What we need is a system where nonbank lenders must report to credit bureaus just like banks do.”*

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Under the FCRA, consumers have two options to dispute the accuracy of information within their credit report. First, they can directly contact the furnishers of the information (i.e., the bank) or they can contact the credit bureaus directly. Generally disputes have to be investigated and resolved within 30 days.

Unfortunately, the dispute resolution system is susceptible to abuse. Credit repair scams seek to take advantage of consumers who have negative information on their credit reports. These scams promise to remove the negative information from a consumer's credit report. The credit repair organizations sometimes file illegitimate disputes on behalf of consumers, charging them a high price for a service that usually results in little benefit to the consumer.

Consequently, banks often see disputes repeated month after month. These often come in envelopes with mass produced addresses and on standard form letters that come from a third party who is signing the customer's name. These disputes allege the same issue that has already been researched and addressed. The strategy employed by these credit repair scams is to bombard information providers with requests in the hope that those providers will fail to respond to a request within the 30-day window. If a dispute is not resolved within this 30-day window, the derogatory mark is automatically removed from the consumer's report.

While FCRA was amended to recognize this kind of abuse and not require re-investigation for repeated disputes of the same information, furnishers must still respond to each of those disputes. **ICBA suggests that the statute be further amended to allow the ability to reject as scams repetitive unfounded dispute requests.**

The Fair and Accurate Credit Transactions (FACT) Act requires financial institutions with covered accounts to develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft in connection with opening new accounts and operating existing accounts. Under the FACT Act, banks are required to provide an annual report to their board of directors that summarizes the bank's Red Flag/Identity Theft Program. Community banks complain that while this report may have been needed and had some usefulness at the inception of the rules, it is now largely obsolete since the bank's board should be well aware of any significant issues that arise under the FACT Act. As one banker noted, *"like most compliance regulations, compliance with the FACT Act should be monitored by the bank with any adverse findings reported to the appropriate party. An annual report is unnecessary."* **ICBA suggests this annual report requirement be removed from the statute.**

Deposit Insurance Coverage. Several community bankers mentioned that the deposit insurance coverage rules should be simplified and streamlined without reducing overall insurance coverage. There are more than a dozen different deposit insurance categories or "rights and capacities" in which a depositor can own funds in an FDIC-insured

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institution. The rules regarding coverage for trust accounts and for business accounts such as partnerships can be very difficult. As one banker put it:

“Structuring and titling accounts to maximize deposit insurance coverage can be very complex and confusing, especially when new entities are evolving such as revocable trusts, LLCs, and partnerships. If the FDIC could set up a 24 hour turn-around to answer a bank’s submission of a title or account structure question, that would be helpful.”

Directors, Officers and Employees

Regulation O. As ICBA mentioned in its first EGRPRA comment letter, Federal Reserve Regulation O still continues to confuse community bankers. The rules regarding prior approval of extensions of credit, 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. **For instance, the \$100,000 aggregate credit limit to an executive officer in Section 215.5 should be raised to \$250,000 just to reflect the changes to the costs of living since the regulation was enacted.**

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.

Money Laundering

Of special concern to ICBA member banks are the requirements and costs associated with filing currency transaction reports (CTRs), especially when weighed against the lack of evidence that they provide useful information. Bankers believe that law enforcement has a tendency to shift costs and burdens under the Bank Secrecy Act to the banking industry while ignoring the true costs of compliance. **ICBA recommends raising the CTR threshold from \$10,000 to \$30,000 to reflect the increase in the cost of living since the statute was enacted.** As one banker indicated:

“CTRs are intended to collect information to facilitate the identification, investigation, and prosecution of individuals involved in money laundering, financing of terrorism and other financial crimes. Although CTRs were envisioned to provide useful information for money laundering investigations, the overwhelming percentage of CTRs relate to ordinary business transactions, which create an enormous burden on financial

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institutions but do not contain useful information concerning potential criminal activities. It would seem reasonable that the threshold for filing CTRs be raised in an effort to better replicate the value of cash transactions which Congress originally intended to require for CTR filings in 1970.”

Community bankers also have suggested a broader and less confusing “seasoned customer CTR exemption” to exempt customers that have had relationships with the bank over a period of time from having to file a CTR. As one banker suggested, *“I agree with raising the CTR dollar threshold. I also suggest a period of time, such as six months or a year, where the financial institution has a satisfactory history with the customer so that the customer can be removed from the high risk category wherein their deposits trigger CTRs or SARs.”*

With respect to filing of Suspicious Activity Reports or SARs, community bankers are still skeptical that these filings are worth the costs of completing them. One community banker indicated that:

“Our volume of SARs/CTRs have increased by ten-fold in the past two to three years. We complete these for defensive purposes. Part of this is probably overkill, out of fear that we are going to miss something that a regulator feels should have been reported. It is hard for me to believe, that in a rural area, the value of the information we provide on these forms is commensurate with the time required to comply.”

ICBA recommends improvements to the SAR process including better communication of law enforcement priorities and more realistic threshold requirements for SAR filing. Also, community banks would like more feedback from law enforcement regarding the outcomes associated with the use of SARs. Community bankers are unconvinced that SAR filings are helpful to law enforcement.

Conclusion

ICBA recommends that those regulations now under the jurisdiction of the CFPB should be part of the next EGRPRA review process so that the bulk of the consumer protection rules can be reviewed and commented on by community bankers.

With respect to those regulations under the category of “consumer protection,” ICBA has a number of recommendations for streamlining and improving the flood insurance regulations, the regulations under the Fair Credit Reporting Act and FDIC’s Deposit Insurance Coverage regulations. These include changing the flood notice requirements and updating the flood insurance monitoring process, changing the FCRA dispute resolution process, and simplifying the deposit insurance coverage rules without decreasing insurance coverage, particularly with respect to insurance coverage of trusts.

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With regard to Regulation O, we recommend increasing some of the thresholds including the aggregate credit limit for executive officers and 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 recommend that the agencies 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.

With regard to the money laundering regulations, we strongly recommend increasing the CTR threshold from \$10,000 to \$30,000 to reflect the cost of living increases since the inception of the regulation. We also support a broader and less confusing seasoned customer CTR exemption and favor more feedback from law enforcement concerning the filings of SARs.

ICBA appreciates the opportunity to comment on the third notice published by the banking agencies under EGRPRA to help identify those regulations that are outdated, unnecessary or unduly burdensome and which are include in the categories of consumer protection, directors, officers, and employees, and money laundering. If you have any questions or need further information, please do not hesitate to contact me at Chris.Cole@icba.org.

Sincerely,

/s/ Christopher Cole

Christopher Cole
Executive Vice President

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