March 21, 2016

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. R-1510

Dear Sirs or Madam:

The OCC, the Federal Reserve Board, and the FDIC are in the final stages of reviewing regulations they issued to identify those that are outdated, unnecessary or unduly burdensome for insured depository institutions.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 (EGRPRA) and started in 2014 and will be concluded this year. The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the fourth notice that was published by the banking agencies under EGRPRA regarding the regulatory categories of Rules of Procedure, Safety and Soundness, and Securities.

[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.

The EGRPRA Process

ICBA commends the banking agencies for holding six EGRPRA outreach meetings including the last one held in Arlington, Virginia at the FDIC's Seidman Center. 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. For instance, we urge that the OCC's recommendations (1) to exempt community banks from the Volcker Rule (2) allow federal savings associations to have more flexibility with their charter be included as recommended legislative changes. We also urge the agencies to include other recommendations to amend the Bank Secrecy Act and the Community Reinvestment Act.

Recently, in connection with the EGRPRA process, the OCC also proposed a number of regulatory changes regarding notice and approval requirements and licensing rules for national bank and federal savings associations. **While these changes are commendable, we hope that the regulatory agencies will go further than this, and not just make a series of regulatory changes that will have an insignificant impact on community banks.**

Unfortunately, this is what happened during the last EGRPRA review that took place during 2004-2006 and is why community banks were deeply disappointed in the results. **The EGRPRA process should go beyond merely tweaking regulations or eliminating duplication.** The agencies must 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.

ICBA's Previous Recommendations

In our three previous comment letters on EGRPRA, ICBA has made a number of recommendations for reducing regulatory burden. For example, in our first 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 prompt corrective action (PCA) regime so that for instance, troubled community banks could attract new capital and improve their chances for recovery. 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. We said that the regulators should allow for full inclusion of a community bank's ALLL as regulatory capital regardless of the size of the allowance. Additionally, that part of the allowance up to 1.25 percent of risk-weighted assets 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 supported allowing community banks with assets up to $1 billion or less that received an overall CRA rating of outstanding to be evaluated every five years and those with an overall CRA rating of satisfactory to be evaluated every four years.

In our third comment letter, ICBA had 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 included 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.

With regard to Regulation O, we recommended 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 recommended 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 recommended 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.

We also noted in our third comment letter that it is unfortunate that most of the consumer protections 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 CFPB. For instance, regulations that were often mentioned by community bankers during the first EGRPRA process such as the right of rescission under the Truth in Lending Act or the information gathering requirements under the Home Mortgage Disclosure Act were off-limits under the current review process since rulemaking authority under those laws has been transferred to the CFPB. **ICBA recommends that at the next EGRPRA process, the CFPB should be part of the 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.**

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— Rules of Procedure, Safety and Soundness, and Securities.

Appraisal Rules (12 CFR Part 34)

With regard to the appraisal rules, **ICBA commends the recently released Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions.** As noted in that release, many bankers raised at the EGRPRA outreach meetings questions regarding supervisory expectations for using an evaluation instead of an appraisal for estimating the market value of real property securing real estate-related financial transactions.

We believe the Interagency Advisory responds adequately to the questions that were raised at the outreach meetings. For instance, the Advisory clarifies that in rural areas where there are few, if any recent comparable sales of similar properties in reasonable proximity to the subject property, bankers can use alternative valuation methods such as the “cost approach” or the “income approach” to support a market value conclusion in an evaluation.

However, ICBA believes that more should be done to relieve the cost and regulatory burden of appraisals. **Specifically, ICBA recommends updating the $250,000 transaction value threshold to $500,000 under 12 CFR Part 34, so that transactions where the loan amount is less than $500,000 would not require an appraisal but would require an evaluation. Similarly, we would raise the $1,000,000 threshold under 12 CFR Part 34 to $2,000,000 so that real estate-secured business loans with a transaction value of $2,000,000 or less (provided that the sale of, or rental income derived from, real estate is not the primary source of repayment for the loan) would be exempt from appraisal requirements.** It has been many years since these thresholds were updated to reflect the rising costs of real estate particularly in many urban markets. Now is the appropriate time to implement those changes.

Although Regulation Z is not being reviewed as part of the EGRPRA process, we would still recommend that the appraisal requirements under that regulation with regard to higher-priced mortgages conform to the appraisal rules of 12 CFR Part 34 so that the requirements are the same. Community banks consistently complain about the regulatory burden of having to comply with two appraisal requirements for a higher-priced mortgage. In many instances, we believe that an evaluation conducted under the requirements of the Interagency Advisory noted above would render accurate if not more accurate results than an appraisal completed by a state-licensed appraiser.

Frequency of Safety and Soundness Exams

ICBA was gratified that Congress recently passed legislation raising the asset threshold to $1 billion for those highly rated banks that are eligible for an eighteen month safety and soundness exam. However, **ICBA believes the asset threshold should be raised further so that highly rated banks with assets up to $2 billion could benefit from an extended exam cycle. ICBA also recommends that the exam cycle be extended from eighteen months to two years for these banks.** Both changes would provide needed relief to bank management for whom exams are a significant distraction from serving customers and communities. Also, both changes would allow examiners to better target their limited resources to banks that pose systemic risks.

Real Estate Lending Standards

When ICBA surveyed its leadership bankers concerning the safety and soundness regulations, some suggested that the supervisory loan-to-value (LTV) limits for loans secured by raw land should be updated. At present, the LTV is 65%, which in many situations is too low. In addition, bankers suggested that the rental real estate should have LTV limits increased to 90% of the purchase or appraised value of the property, instead of the current 85%. In a rural community, a 10% down payment on rental real estate should be sufficient.

One banker also related the following concerning the tracking of loans that exceed supervisory guidelines:

"If you book a new loan above supervisory limits, it goes into the "basket" of aggregate loans in excess of LTV or regulatory guidelines and must be tracked as a percentage of tier one capital and reported quarterly to the board. Those aggregate loans cannot exceed 100% of tier one capital. I can understand tracking new loans where you violated the regulation from the beginning on a new loan. However, do we also need to track performing loans where a new appraisal is performed and there has been a deterioration in value? Regulators should exempt from these tracking requirements loans that are not TDRs and that fall into that category solely because an appraisal shows a reduction in value. The tracking and reporting of these loans

1615 L Street NW, Suite 900, Washington, DC 20036-5623 | 800-422-8439 | FAX: 202-659-1413 | Email: info@icba.org | Website: www.icba.org

confuses my board. When they see the quarterly list, they believe the bank has booked a bunch of loans that were in excess of supervisory guidelines, when in fact most of the loans are old loans."

Annual Independent Audits

ICBA believes it is time to update the $500 million asset threshold in 12 CFR Part 363, regarding annual independent audits. W**e believe that Part 363 should only apply to insured depository institutions that have assets of $1 billion or more.** While this change would have a limited impact on many state chartered banks since they are subject to state law requirements concerning an outside audit, this would at least reduce the accounting burden on national banks. As one banker put it:

"Our outside opinion audit which costs $35,000 per year is a waste of money. Our bank is a very non-complex organization, yet we have to spend money to get an opinion audit each year. This audit basically reviews what our external loan review has already performed, as well as our internal "outsourced" auditor already performs at a cost of around $40K per year. Our safety and soundness exam should be sufficient. What's worse is that the outside opinion auditors always disagree with regulatory expectations when it comes to the amount to be reserved in ALLL, treatment of TDRs, and write downs on other real estate held (OREO)."

Furthermore, the internal control requirements of Section 363.3—which apply to banks with assets of $1 billion or more—should also satisfy the internal control requirements of Section 404(b) of the Sarbanes Oxley Act. That way, publicly held banks and bank holding companies that report to the SEC would only have to complete one internal control report for the regulators. For many publicly held banks, conforming the requirements and applicability of Part 363.3 with SOX Section 404(b) would reduce their auditing costs substantially.

Brokered Deposits (12 CFR Part 337.6)

Last December, ICBA filed a joint comment letter with The Clearing House Association L.L.C., the American Bankers Association, and the Financial Services Roundtable commenting on the FDIC's proposed update to its frequently asked questions entitled "Regarding Identifying, Accepting and Reporting Brokered Deposits" that were issued under 12 CFR Part 337. The joint letter commended the FDIC for recently making some clarifications and revisions to the original guidance and recognizing that classifying deposits as brokered requires an analysis of all relevant facts and circumstances.

However, the letter specifically recommended (1) that the FDIC also clarify that a dual-hatted employee (one that is employed by the bank but performs functions for an affiliate or an associated party) is not a "deposit broker" when he receives compensation that is primarily in the form of a salary and does not share his salary with a broker dealer, (2) that a "deposit broker" should not include a call center employee or a bank employee that shares office space with a broker dealer, (3) that once a deposit is brokered does not mean it forever maintains its status as brokered even when it is renewed, (4) traditional

1615 L Street NW, Suite 900, Washington, DC 20036-5623 | 800-422-8439 | FAX: 202-659-1413 | Email: info@icba.org | Website: www.icba.org

transactional deposit account products involving a direct, continuing relationship between a customer and a bank should not be considered brokered deposits, and (5) government agencies administering benefits programs should not be considered deposit brokers.

Although most community banks do not have a substantial amount of brokered deposits, they still need clear guidelines as to who is a "deposit broker" and when a deposit is considered "brokered" since it can impact not only their CAMELS ratings but also their FDIC assessments. We therefore look forward to further clarifications to the brokered deposit FAQs.

Transactions with Affiliates (Regulation W)

Most community banks are not complex institutions with large numbers of affiliated companies. However, many community banks have affiliates and from time to time, need to understand how Regulation W will impact their transactions with their affiliated companies. Just like when the Volcker Rule was released, **we recommend that the agencies issue a simplified or a "community bank" version of Regulation W that would apply to a non-complex bank holding company with just a few affiliates.** This would greatly assist community banks and bank holding companies when they are contemplating a transaction with their affiliate and in some instances, might avoid the hiring of a lawyer or consultant.

Recordkeeping and Confirmation of Securities Transactions (12 CFR Part 12)

Some community bankers questioned the necessity and burden of the notification requirements under Section 344.6 that deal with cash management sweep accounts. These bankers also complained that the disclosure requirements of FIL 09-2009 entitled "Sweep Account Disclosure Requirements Frequently Asked Questions" were burdensome and that customers often requested that daily confirmation notices be "turned off" where sweeps took place on a daily basis. Sweep account disclosure requirements should be simplified so that community banks can automatically renew daily sweeps without having to confirm each renewal on a daily basis.

Conclusion

ICBA commends some of the burden reducing initiatives that have been proposed by the banking agencies in connection with EGRPRA but urges the agencies to go much further and make bolder and more significant changes. In particular, we urge the agencies to adopt the items that community banks frequently mentioned at the EGRPRA outreach meetings including (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.

We also strongly encourage the banking agencies to include specific recommendations for legislative changes in their EGRPRA report to Congress. These include (1) a community bank exemption under the Volcker rule and (2) changes to the federal savings association charter, and (3) changes to the Bank Secrecy Act and the Community Reinvestment Act.

In this letter, we recommended changes to the appraisal requirements including updating the $250,000 transaction value threshold to $500,000 under 12 CFR Part 34, so that transactions where the loan amount is less than $500,000 would not require an appraisal but would require an evaluation. Similarly, we urge raising the $1,000,000 threshold under 12 CFR Part 34 to $2,000,000 so that real estate-secured business loans with a transaction value of $2,000,000 or less would be exempt from appraisal requirements provided that the sale of, or rental income derived from, real estate is not the primary source of repayment for the loan.

With regard to real estate lending standards, we recommend increasing some of the LTV ratios. With respect to auditing requirements, we recommend that 12 CFR Part 363 only apply to banks with assets of $1 billion or more. In addition, we recommend that the requirements of SOX 404(b) be conformed with the internal control requirements of Part 363.

ICBA has previously commented on and has met with FDIC staff concerning the brokered deposit regulations and the desire to clarify the brokered deposit FAQ and the definition of a "deposit broker." With regard to the regulations concerning transactions with affiliates, we recommend that the agencies issue a simplified or a "community bank" version of Regulation W that would apply to a non-complex bank holding company with just a few affiliates. We also recommend that the sweep account disclosure requirements be simplified in the case of daily sweeps.

ICBA appreciates the opportunity to comment on the fourth notice that was published by the banking agencies under EGRPRA to help identify those regulations that are outdated, unnecessary or unduly burdensome. 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