

# Preliminary FDIC Plan to Conduct a Comprehensive Regulatory Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

## I. Background

During the fall of 2011, the FDIC published on its Web site *Plans to Review Existing Regulations for Continued Effectiveness*.<sup>1</sup> To prepare for the upcoming Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”) review process, the FDIC indicated it would publish for public comment in early 2012 a plan outlining the process for the FDIC’s next comprehensive review of its rules. The issuance of this document fulfills that commitment. The FDIC notes that many of our regulations and policies have been adopted on an inter-agency basis or are very similar to regulations adopted by the other bank regulatory agencies. As a result, we plan to work closely with the other agencies to complete our upcoming regulatory review.

Section 2222 of the EGRPRA<sup>2</sup> requires that, at least once every 10 years, the Federal Financial Institutions Examination Council (“FFIEC”)<sup>3</sup> and each appropriate federal banking agency<sup>4</sup> (collectively the “Agencies”) represented on the FFIEC must conduct a review of all regulations prescribed by the FFIEC and each appropriate federal banking agency. This review will identify any outdated or otherwise unnecessary regulations imposed on insured depository institutions. The Agencies may complete their regulatory responses to the EGRPRA reviews individually or jointly.

The Agencies completed their last regulatory review under EGRPRA in 2006 and, after completing that review, issued a Joint Report to Congress describing the actions taken by the Agencies to fulfill the regulatory review requirements of EGRPRA. The Agencies must complete the next comprehensive regulatory review under EGRPRA by December 31, 2016. By issuing this preliminary plan for comment, the FDIC is beginning the EGRPRA review process now to maximize the opportunity for public input while ensuring the review is completed before the 2016 deadline.

---

<sup>1</sup> <http://fdic.gov/regulations/laws/plans/index.html>

<sup>2</sup> 12 U.S.C. 3311.

<sup>3</sup> The FFIEC is comprised of the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB) and the State Liaison Committee (SLC), which is comprised of representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS).

<sup>4</sup> The appropriate federal banking agencies are the OCC, FRB and FDIC. See 12 U.S.C. 1813(q).

## II. The EGRPRA Review Process

In conducting the regulatory review mandated by Section 2222 of EGRPRA, the Agencies must jointly or individually categorize regulations by type, such as “consumer regulations” or “safety and soundness” regulations. Once we have established appropriate categories, we must provide notice and seek public comment. In particular, Section 2222 of EGRPRA requires that the Agencies ask the public to identify areas of our regulations that are outdated, unnecessary, or unduly burdensome. The Agencies are required to issue one or more categories of regulations for comment at regular intervals during the EGRPRA review process so that all of the Agencies' categories of regulations are published for comment within the 10-year cycle.

Once the categories of regulations have been published for comment, the Agencies must publish in the Federal Register a summary of the comments received, identify any significant issues, and discuss those issues. EGRPRA also requires the Agencies to “eliminate unnecessary regulations to the extent that such action is appropriate.”<sup>5</sup>

Finally, Section 2222 of EGRPRA requires the FFIEC to submit a report to Congress within 30 days after the Agencies publish the comment summary and discussion in the Federal Register. The report to Congress must summarize any significant issues raised by the public comments and the relative merits of those issues. The report also must analyze whether the appropriate federal banking agency can address by regulation the regulatory burdens associated with the issues raised, or whether the regulatory burdens identified must be addressed by legislation.

The FDIC’s upcoming EGRPRA review will supplement and complement the reviews of regulations the FDIC conducts under other laws and pursuant to our internal policies.<sup>6</sup> Moreover, as part of its implementation of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (“Dodd-Frank Act”),<sup>7</sup> the FDIC continues to be engaged in a review of its rules affected by the Dodd-Frank Act. We are updating, streamlining, or rescinding certain rules to comply with and conform to the Dodd-Frank Act. We also are establishing new rules that promote a stable financial system while seeking to minimize regulatory burden. In all Dodd-Frank Act rulemakings, we are coordinating our efforts closely with the other financial regulators to ensure consistency and avoid duplication of efforts. We also have invited public participation in each phase of the rulemaking process. Although these Dodd-Frank Act rulemakings have been recently adopted (or are in the process of adoption), and related rules streamlined or rescinded, the FDIC is

---

<sup>5</sup> 12 U.S.C. 3311(d)(2).

<sup>6</sup> The FDIC addresses issues of regulatory burden when it proposes and adopts a rule. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and internal agency policies (*see*, FDIC’s *Statement of Policy on the Development and Review of FDIC Regulations and Policies*, 63 FR 25157 (May 7, 1998)), the FDIC examines each rulemaking to minimize the burdens it might impose on the industry and considers various alternatives.

<sup>7</sup> Public Law 111–203, 124 Stat. 1376 (2010).

seeking comment on how those rulemakings should be included and reviewed as part of the EGRPRA review process.

### III. The EGRPRA Review's Special Focus

The regulatory review process mandated by EGRPRA provides a significant opportunity for the Agencies and the public to review groups of related regulations and identify possibilities for streamlining or simplification. The EGRPRA review also can identify and help eliminate inconsistencies among regulations of different agencies, keeping in mind that complete uniformity is not always possible due to differences in the types of regulated entities and the applicable statutes. Also, reducing regulatory burden must be consistent with ensuring the continued safety and soundness of insured depository institutions and the stability of the financial system, and maintaining appropriate consumer protections.

EGRPRA also recognizes that burden reduction initiatives must be consistent with our statutory mandates, many of which require certain regulations. One significant aspect of the EGRPRA review program is the recognition that in some instances regulatory modifications may require legislative change. Consequently, we will be soliciting comment on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements, and statutory mandates.<sup>8</sup>

The combination of considering the relationship of regulatory and statutory changes on regulatory burden with the Section 2222 requirement of grouping regulations by type provides the possibility for particularly effective consideration of burden reduction. It may be possible to identify statutes and regulations that share similar goals or complementary methods such that the regulatory requirements could be combined and overlapping requirements could be eliminated.

### IV. Impact on Community Banking

The FDIC is keenly aware of the disproportionate impact that regulatory requirements can have on smaller community banks, which generally operate with less staff and other resources than their larger counterparts. Therefore, in addition to paying particular attention to how regulations impact smaller institutions as part of the EGRPRA process, the FDIC is undertaking a number of initiatives to further our understanding of the challenges and opportunities facing community banks. On February 16, 2012, the FDIC hosted a national conference that focused on the future of community banks and their unique role in supporting our nation's economy. The FDIC also is hosting a series of regional roundtables in each of the FDIC's six regions to solicit input from community bankers on issues of concern to that segment of the banking industry.

---

<sup>8</sup> Institutions also are subject to regulations issued by non-banking agencies, such as the Federal Housing Administration and the Department of the Treasury. The rules of these other agencies are beyond the scope of the EGRPRA review and the Agencies' jurisdictions. However, to the extent the Agencies receive comments raising significant issues regarding these related rules, we intend to identify the issues in the Report to Congress and will notify the related agencies of the substance of the relevant comments.

In addition, the FDIC is undertaking a major research initiative to examine a variety of community bank issues, including their evolution, characteristics, performance, challenges, and role in supporting local communities. Our research agenda will cover topics such as changes in community bank size and geographic concentration over time, trends in technology, measuring the performance of community banks, and changes in community bank business models and cost structures.

Finally, the FDIC is continuing to look for ways to improve the effectiveness of our examination and rulemaking processes. We seek to identify improvements and efficiencies that can be implemented while maintaining appropriate supervisory standards. These efforts are in addition to (and complement) our regulatory review programs, including the upcoming EGRPRA review.

## V. The FDIC's Proposed Process for the EGRPRA Review

The FDIC will conduct its regulatory review program over the next four years to provide the public a sufficient opportunity to comment on FDIC regulations by year-end 2016. To complete an effective EGRPRA review we will coordinate our efforts with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the FFIEC.

As noted above, EGRPRA requires the FDIC and the other federal banking agencies to categorize their regulations by type and gives us authority to determine the categories, suggesting two possible categories: “consumer regulations” and “safety-and-soundness regulations.”<sup>9</sup> The Agencies have regulations that cover a wide variety of topics from minimum capital regulations to the privacy of consumer financial information. Some of these regulations have been issued jointly and are as uniform as possible. Others were issued separately by the Agencies but implement common statutes or policies.

As part of the last EGRPRA review, the Agencies divided their regulations into 12 categories: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. Also during the previous EGRPRA review process, the Agencies determined that these categories represented logical groupings that were not so broad that the number of regulations presented in any one category would overwhelm potential commenters.

We will work with the other agencies to determine whether we should use the same categories or develop any new or different categories for the upcoming EGRPRA review. We recognize that our regulations could be categorized in other ways and

---

<sup>9</sup> It should be noted that rulemaking jurisdiction over many (but not all) consumer protection rules was transferred to the CFPB by the Dodd-Frank Act.

welcome suggestions about the categories we should use and the regulations that should be placed in them.

Since the last EGRPRA review was completed, the Agencies have adopted a number of new regulations, including those mandated or authorized by the Dodd-Frank Act. We would welcome comment on how the upcoming EGRPRA review should include regulations recently adopted (or in the process of adoption), particularly those adopted pursuant to the Dodd-Frank Act. For example, should they be placed in a separate category by themselves or should certain of the Dodd-Frank Act regulations, such as the resolution plan or compensation rules, be placed into some of the other categories or into one or more new categories created for them.

After conclusion of the EGRPRA review comment period, the FDIC will review the comments and decide if further action is appropriate with respect to the regulations included in that notice. That decision will be made by the Agencies in the case of rules we have issued jointly. Any rulemaking to amend or revise those rules would similarly be undertaken jointly, and the public will be provided with an opportunity to comment on any proposed amendments. However, this interagency rulemaking process will not include rules issued by a single agency. Comments that address specific provisions of an FDIC-only regulation will be carefully reviewed and incorporated into the detailed review of the relevant regulation conducted by the FDIC, which will determine whether amendments to its own rules are appropriate in light of comments submitted during the EGRPRA review.

The FDIC welcomes comments on whether we should use the same categories of regulations from the last EGRPRA review process; what regulations should be included in each category, and the overall approach the FDIC intends to take to its regulatory review pursuant to EGRPRA. Comments should be submitted to EGRPRA Public Comments@fdic.gov by Monday, July 16, 2012.