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Quentin Leighty, Treasurer
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October 30, 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(FDIC) (hereinafter collectively referred to as the "Agencies") are reviewing Agency regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies.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 a two-year period, the Agencies are publishing four Federal Register documents that request comment on multiple categories. This letter responds to the second request for comments from the Agencies and concerns the following three categories of banking regulations: Consumer Protection; Directors, Officers, and Employees; and Money Laundering.

The EGRPRA Review Process

ICBA commends the banking agencies for scheduling a virtual outreach meeting on September 25, 2024, to gather input from community bankers. We encourage the agencies to schedule at least

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three more virtual outreach meetings to ensure that all community banks have an opportunity to express their opinions regarding the heavy burden they face from regulation. We also encourage more interaction at these virtual outreach meetings between the regulators and the bankers that testify demonstrating that this is not another check-the-box activity that is mandated by statute for the participating agencies.

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 previous letters 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.

In our first EGRPRA comment letter pursuant to the current review, ICBA called for (1) call report reform, (2) increasing the asset threshold under the Small Bank Holding Company Policy Statement to $10 billion, (3) reducing the regulatory requirements for de novo banks, and (4) and reforming Bank Merger Act regulations. ICBA's comments were echoed and discussed further by many community bankers during the first virtual EGRPRA outreach meeting on September 25th.

Accordingly, ICBA respectfully requests that the current EGRPRA review be conducted in such a manner that meaningful regulatory relief is the result for community banks. Regulatory burden on small and mid-sized institutions has grown to the point where 1000-page proposals are becoming routine**. One community banker at the first EGRPRA outreach meeting said that his bank's regulatory compliance costs have quadrupled since the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2008.** He went on to say:

Approximately 4 of our 39 full time employees or 10% of our team members are dedicated to Compliance and BSA oversight. This does not include the costs for external audits, which can be more than $40,000 annually. The CFPB has chosen to nearly double the number of fields required under Regulation C HMDA reporting. At the same time financial institutions are held to almost zero tolerance for exceptions with HMDA reporting. And now the CFPB has repeated this trend by doubling the reportable fields required under Section 1071 reporting.

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 reiterate our recommendation 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.

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. **Prior assessments have consistently understated the regulatory burden of new regulation on community banks because they have not seriously factored in the cumulative effect of thousands of pages of regulations on a community bank's ability to serve its customers.** 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. With the use 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 accurately measure regulatory burden and make changes pursuant to the recommendations of the consultant.

ICBA's Comments Concerning Consumer Protection Regulations

It is worth noting that most consumer protection regulations that community banks must comply with are issued by the CFPB and therefore are not subject to review under EGRPRA. Since the CFPB was created in 2008, its rules have significantly increased the compliance costs for community banks. For instance, at the first EGRPRA outreach meeting, one banker described the recently issued CFPB rules under Sections 1071 and 1033 of the Dodd Frank Act as posing an "existential threat" to community banks because they were so burdensome. ICBA has repeatedly called for changes to the final Section 1071 rule noting that it will create new layers of regulatory burden that will disrupt lending and reduce access to credit. **ICBA recommends that at the next EGRPRA process, the CFPB is mandated to participate so that the bulk of the consumer protection rules can be reviewed and commented on by the bankers while the safety and soundness regulations are also 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, as described more fully below.

Flood Insurance. In the past, community bankers have identified flood insurance 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 and requirements of flood insurance.

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. One community banker complained recently at the first EGRPRA outreach meeting that notices of special flood hazards were difficult to comply with. He went on to say:

When an institution makes, increases, extends or renews a loan secured by property that is or will be located in a Special Flood Hazard Area (SFHA), the institution must provide a written notice of special flood hazards to the borrower and the servicer, if there is one. The delivery of the notice of special flood hazards must take place within a "reasonable time" before the completion of the transaction. What constitutes "reasonable" notice will necessarily vary according to the circumstances of transactions. Unfortunately, the agencies don't define what is a "reasonable amount of time", but instead have provided guidance that "Agencies generally regard ten days as a "reasonable" time interval. This expectation to provide a borrower notice…at least 10 days before an institution increases, extends or renews a loan secured by property that is or will be located in a SFHA is excessive and burdensome. During the normal course of a renewal, extension or modification a financial institution typically uses a modification or change in terms document that refers to the original loan documents, indicates that all terms remain in force, except terms that are changing. For smaller community banks that may have manual process for identifying loans that require flood insurance ensuring that notices are provided can be challenging.

Fair Credit Reporting Act. Community banks are still concerned about the regulatory burden from 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 the standards to ensure that 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 higher standard under the FCRA than non-banks are 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.*"

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 must 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 accurate, but negative information from a consumer's credit report. The Credit Repair Organizations sometime file illegitimate disputes on behalf of consumers, charging them a high price for a service that usually results in no benefit to the consumer.

Consequently, banks often see disputes repeated month after month. These often come in a generic envelope, with mass produced address information, 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 drop the ball and fail to respond to a request within the 30-day window. If a dispute is not handled 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.**

FACT Act. 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's Comments Regarding Regulations that Concern Directors, Officers and Employees

Simplification and Update of Regulation O. We have only one comment regarding regulations concerning directors, officers and employees. Because of the subjectivity of the rule and the way it is enforced, Federal Reserve Regulation O still continues to be a source of confusion for some 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. **That limit should be increased to at least $250,000.** Because of inflation, many car loans are approaching the $100,000 limit and it was not the intent of the regulations to cover such loans for Board approval.

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.

ICBA's Comments Concerning Money Laundering Regulations

ICBA has several burden reducing recommendations regarding the reporting requirements of the Bank Secrecy Act. These have been made in prior comment letters to the Agencies and to FinCEN.

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Suspicious Activity Reports. Suspicious activity reporting ("SARs") is the cornerstone of the Bank Secrecy Act (BSA) system and was established as a way for banks to provide potentially suspicious leads to law enforcement. Because community banks have a strong incentive to file SARs as a defensive measure to protect themselves from examiner criticism, SARs are filed in increasing and vast numbers without a commensurate benefit to law enforcement. As the government combats money laundering and terrorist financing, ICBA strongly recommends an emphasis on quality over quantity when filing SARs.

ICBA recommends reforming the SAR process by increasing the reporting thresholds, which have not been adjusted since becoming effective in 1992, and by emphasizing those instances in which an institution may rely on risk-based reporting. In the current regulatory environment, community banks undertake a cumbersome process to ensure they are protected, and no mistakes are made in preparation for examiner review. For each transaction the bank identifies as suspicious, a thorough investigation is conducted that typically includes monitoring and reviewing all documentation and account activity, interviewing appropriate personnel, a review of the investigation by a BSA-trained employee, and sometimes a second review by either a compliance or BSA committee, BSA officer, or senior level staff. The investigation is documented, with documents retained on transactions for which a SAR is filed, as well as for investigations for which a SAR is not filed. If a SAR is not filed, banks must document and subsequently justify to their examiner the reason a flagged transaction did not result in a filed SAR. This is done for every suspicious transaction no matter how minor or severe the potential offense.

This process is time consuming, and labor intensive and community banks are skeptical that the method by which SARs are completed provides commensurate value to law enforcement. Notwithstanding this arduous process, banks are questioned on the number of SARs filed in relation to the number of accounts and transactions initially identified as suspicious rather than the quality of the bank's monitoring system or investigative process. Additionally, bankers are questioned on the total number of SARs filed since the last examination as though a quota is required. As a result, bank employees often file SARs as a defensive measure. The current focus uses up valuable resources as banks spend more time monitoring for thresholds (quantity) and less time focused on actual suspicions (risk).

SAR Thresholds. The archaic and labor-intensive nature of the SAR process makes the SAR regime ineffective and cumbersome. Community banks follow the same SAR procedure for every suspicious transaction no matter how minor the potential offense. This approach leaves community banks skeptical that SARs have real value to law enforcement. **As such, ICBA recommends the current SAR threshold should be raised from $5,000 to $10,000, which will modernize thresholds by emphasizing quality over quantity and enable community banks to provide more targeted and valuable information to law enforcement.**

The secrecy involved in the law enforcement investigations that are triggered by these thresholds often raise questions in the minds of community bankers. Filed SARs and even direct contact to law enforcement often go unanswered. Banks have ample examples of fraud and other financial crimes where even after they filed a SAR and continued to file SARs on a specific matter, and contacted law enforcement, there was no follow-up. **This leaves community banks with a sense that reporting potential or actual financial crimes is often a waste of time.** Essentially law enforcement does not investigate fraud until the dollar amount is high enough to warrant the attention of law enforcement

agents. Along with providing some sense of progress on investigations, it would be helpful if the triggers that would initiate an investigation were known to community banks so that they could incorporate them into their risk-based approach. **It is unnecessary and ineffective to put the burden on community banks to collect this information if no action is taken, or justice is not provided to victims.**

Currency Transaction Reports. The reporting thresholds are significantly outdated and capture far more legitimate transactions than originally intended. **The currency transaction report ("CTR") threshold, set in 1970, should be raised from $10,000 to $30,000 with future increases linked to inflation.** CTRs are intended to collect information for investigations into tax evasion, money laundering, terrorist financing and other financial crimes. However, the overwhelming percentage of CTRs relate to ordinary business transactions, which create an enormous burden on banks and often have nothing to do with financial crime investigations. **While the BSA provides banks with the ability to exempt certain customers from CTR reporting, a higher threshold would produce more targeted, useful information for law enforcement.**

Beneficial Ownership Rule. The Corporate Transparency Act (CTA) amended the BSA by imposing new beneficial ownership reporting requirements and calling for the creation of a FinCEN registry. The CTA requires FinCEN to issue rules mandating reporting companies to submit certain information to FinCEN about their beneficial owners; requires FinCEN to maintain this information in a confidential, secure, and non-public database; and authorizes FinCEN to disclose the information to banks to facilitate compliance with customer due diligence ("CDD") requirements. The CTA also provides for the issuance and use of identifiers assigned by FinCEN that persons may submit to banks to satisfy certain beneficial ownership reporting requirements. The CTA also requires the Treasury to revise its existing CDD rules to reduce any burdens on FIs and legal entity customers that are unnecessary or duplicative.

Because FinCEN is mandated to collect beneficial ownership information ("BOI") directly from reporting companies, ICBA strongly urges FinCEN to withdraw its requirement that banks also collect BOI and rely instead on their risk-based monitoring procedures. **From the onset of the CDD rule's development, ICBA's position has been and continues to be that if the government has an interest in collecting and maintaining records of beneficial owners of private legal entities, such information should be collected and verified at the time a legal entity is formed, rather than requiring banks to collect this information.**

According to FinCEN, entities are at times used to obfuscate ownership interests and used to engage in illegal activities such as money laundering, corruption, fraud, terrorist financing, and sanctions evasion. Criminals have exploited the anonymity that legal entity ownership can provide to engage in a variety of crimes, and often take advantage of shell and front companies to conduct such activity. Making legal entities more transparent by requiring identifying information of natural person owners would likely hinder such abuses. **However, placing the responsibility and oversight of collecting this information on the private sector, specifically banks, is misguided and ineffective.** The CTA requires Treasury to ensure its new CDD rules reduce burdens on banks. **Requiring both FinCEN and banks to collect the same information on the same entities is ineffective, duplicative, unnecessary, and costly.**

This exercise is also extremely burdensome to both legal entities and banks because the onerous task of confirming BOI has already taken place and is on file. To do so each time a new account is

opened adds no benefit whatsoever to law enforcement. The drafters of the CTA mandated the Secretary of the Treasury to revise the final CDD rule to "reduce any burdens on Financial Institutions and legal entity customers that are, in light of the enactment of this division and the amendments made by this division, unnecessary or duplicative." ICBA strongly urges FinCEN to execute its directive from Congress by withdrawing the requirement that legal entities provide to banks, and banks collect BOI, as we believe it is the only way to best implement the CTA and will reflect this current modernization effort.

Changes to BSA Regulations and Guidance to Improve Efficiency Flexibility. Allowing banks to deploy resources to areas that impact their specific institutions (while not ignoring national priorities) will improve efficiency. BSA requirements should be flexible and easily applied. ICBA firmly believes that an effective and efficient AML program would provide banks with greater flexibility to reallocate resources away from practices that are not required by law or regulation, that are mechanical, defensive and "check-the-box," in nature, that respond to examiner demand and render little to a bank's overall risk management objective. Freeing up these resources away from activities that are low priority and reallocating them to address areas of higher risk priorities within an institution's risk determination is the surest way to achieve an effective and efficient AML program. **Future rulemaking should not only consider this notion of reallocation for banks but must also make clear that examiners should conduct examinations pursuant to those reallocated resources, and not penalize a bank's decision to refocus their AML priorities.**

Updating or Amending Regulatory Processes. Other ways FinCEN can improve efficiency is by:

- Updating SAR and CTR thresholds,
- Expanding CTR exemptions,
- Improving the BSA E-Filing System by working with a company with specific expertise in enhancing data entry automation and simplifying user interfaces,
- Creating an EZ SAR form that reduces the amount of data that needs to be collected for smaller offenses and when suspicious activity thresholds are not met,
- Eliminating the requirement to file SARs every 90 days,
- Updating the Suspicious Activity Information section on the SAR form based on both national and international financial crime trends to enable FIs to get the basic information to those reviewing the report more quickly and prior to reading the narrative section,
- Revising the Section 314(a) process by posting lists on a monthly basis versus every two weeks, and
- Communicating measurements for what will trigger a financial crime investigation.

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 limits the bank's ability to serve its customers. 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.

ICBA appreciates the opportunity to comment on the second notice that was published by the banking agencies under EGRPRA to help identify those regulations in the second category 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
Executive Vice President and Senior Regulatory Counsel
Independent Community Bankers of America