One Mission. **Community Banks.**

March 11, 2025

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(FDIC) (hereinafter collectively referred to as the "Agencies") are reviewing Agency regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies.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 third request for comments from the Agencies and concerns the following three categories of banking regulations: Rules of Procedure, Safety and Soundness, and Securities.

Touching on all categories of review, the Independent Community Bankers of America (ICBA) continues to call on the Agencies to implement the priorities outlined in ICBA's "Repair, Reform, and Thrive" plan. We urge the Agencies to (1) fast-track repeals of harmful and burdensome rules and reissue tiered and rightsized regulations, (2) ensure meaningful community bank representation in supervision and oversight, and (3) advance a level regulatory playing field for institutions that pose the highest risk to economic stability.

The EGRPRA Review Process

ICBA commends the banking agencies for scheduling a virtual outreach meeting on March 6, 2025, to gather input from community bankers. However, we believe that each of the four outreach meetings should address only those categories of regulations that are subject to the current comment process. For instance, the March 6th meeting should have focused on Rules of Procedure, Safety and Soundness, and Securities rather than those six categories of regulations that were the subject of the first two EGRPRA comment letters. If the focus at the March 6th meeting had been on those categories of regulations that commenters are currently reviewing and studying, we believe there would have been greater banker participation.

We encourage the agencies to schedule at least 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 and more leadership attendance from the Agencies to demonstrate that this effort is not another check-the-box activity that is mandated by statute.

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.

In our second EGRPRA comment letter, we recommended (1) simplifying and streamlining the flood insurance regulations, (2) changing the Fair Credit Reporting Act, (3) simplifying and updating Regulation O including increasing the $100,000 aggregate credit limit to executive officers under Section 215.5 to $250,000, (4) updating the money laundering regulations by increasing the SAR threshold to $10,000, and (5) increasing the CTR threshold to $30,000, and changing the regulations dealing with beneficial ownership.

We applaud the current effort by the Trump Administration to reduce the burden of regulations on community banks and we hope this EGRPRA effort will serve as a catalyst for further burden reduction. We are particularly pleased that the FDIC has withdrawn proposed rules Establishing Standards for Corporate Governance and Risk Management and the proposal concerning Brokered Deposit Restrictions. We had planned to discuss in this letter the onerous regulatory burden of complying with both proposals and were going to request that both proposals be rescinded.

In the past, regulatory burden on small and mid-sized institutions grew to the point where 1000-page proposals were 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 Safety and Soundness Regulations

Changing the FDICIA thresholds

ICBA urges the FDIC to amend its regulations concerning annual independent audits and reporting requirements under 12 CFR part 363 (collectively referred to as "the part 363 requirements") by permanently raising the asset thresholds that impose unnecessary and costly regulatory burdens upon the nation's smallest community banks. **Specifically, ICBA requests that only institutions with total assets of $1 billion or more (currently, the asset threshold is $500 million) be subject to part 363 requirements regarding audited financial statements. Additionally, we propose that institutions with total assets of $10 billion or more (currently, the asset threshold is $1 billion) be subject to the**

requirement of having internal control assessments by management and external auditors. [1]

ICBA previously urged the FDIC to utilize its authority, pursuant to Section 36 of the FDI Act, to increase the asset thresholds for the FDICIA audit and reporting requirements because "consolidation in the banking industry and the effects of inflation warrant a significant adjustment."[2] Now that the EGPRPA review includes a look at the part 363 requirements, we renew our request for the FDIC to amend part 363 because of industry consolidation and inflation. These threshold requirements were last updated almost twenty years ago at a time when there were more banks and industry consolidation was not nearly as significant.

The FDICIA audit and reporting requirements are both costly and burdensome for small community banks and can often run between $100,000 to $200,000. Almost as onerous, particularly for banks located in rural areas, is the requirement for the audit committee to be comprised of a majority of outside directors who are independent of management of the institution. Given the potential liability an outside director may incur, many rural banks struggle to attract and retain board members and therefore cannot easily comply (or in some instances, cannot ever comply) with part 363's audit committee composition requirements.

Considering these challenges, some community banks intentionally try to stay under the 363 asset thresholds because the costs to comply, once the institution is minimally above the asset threshold for the FDICIA audit and reporting requirements, outweigh the benefits of nominal asset growth. The FDIC should avoid saddling small community banks with anti-competitive regulatory burden and instead permanently raise the part 363 thresholds to amounts that appropriately differentiate the small, midsize, large, and systemically important institutions operating in today's environment. Because the FDIC has not adjusted the size of the asset threshold for internal control assessments since 2005, and because the agency has never changed the asset size threshold for other audit and reporting requirements under part 363, the regulation no longer reflects Congress' original intent in enacting the FDICIA--that the FDIC design regulatory requirements that distinguish small community banks from large financial institutions.

When the FDIC first implemented the FDICIA in 1993, the agency noted that by selecting $500 million in total assets as the appropriate size threshold, only 1,000 of the largest banks would be subject to the regulation. As a percentage of the total number of institutions in existence at that time, the FDIC's asset threshold captured approximately 7% of banks within the industry. Similarly, when the FDIC amended part 363 in 2005 by raising the asset threshold for internal control assessments from $500 million to $1 billion, the agency noted about 600 of the largest insured institutions with approximately 86 percent of industry assets would continue to be covered by the internal control reporting requirements of part 363. Once again, the FDIC selected an asset threshold that captured approximately 7% of banks operating

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[1] Part 363 implements the Federal Deposit Insurance Corporation Act (FDICIA) requirements that banks of a certain asset size (as determined by the FDIC) engage an independent auditor to perform annual audits and assess the effectiveness of internal control over financial reporting and compliance. Section 36 of the Federal Deposit Insurance Act (FDI Act) grants the FDIC discretion to set the asset size threshold for compliance with statutory requirements, but it states that the threshold cannot be less than $150 million.

[2] See letter from Christopher Cole, ICBA Executive Vice President and Senior Regulatory Counsel, to the Honorable Chairman Jelena McWilliams dated September 16, 2019 and letter from Rebeca Romero Rainey, ICBA President and CEO, dated September 27, 2021.

within the industry at that time.

However, because the FDIC has not amended part 363's asset thresholds since 2005, the size limits for the FDICIA audit and reporting requirements are now distorted given the widespread bank consolidation and inflationary trends that have occurred during the past three decades. As we noted in our letter dated September 27, 2021, fewer than half of the banks operating in 1992 are still in existence today meaning that approximately 35% of banks are now captured by the FDIC's $500 million asset threshold for audited financial statements and approximately 20% of banks are presently subject to the FDIC's $1 billion asset threshold for internal control assessments by management and external auditors.

In short, the current part 363 asset thresholds apply to more banks within the industry than ever before, yet only a few large, complex, and systemically important financial institutions control the largest percentage of industry assets. When the FDICIA was enacted, Congress intended to exempt small depository institutions from independent annual audits and reporting requirements, while also requiring the least-cost resolution of insured depository institutions and improving supervision and examinations. Because the FDIC has not made frequent or regular adjustments to the part 363 asset thresholds to keep pace with industry changes, the current limits no longer provide a meaningful exemption to community banks. ICBA believes the asset thresholds under part 363 need to be significantly increased. These adjustments are overdue and will achieve meaningful burden reduction without sacrificing safety and soundness or posing risk to the FDIC's Deposit Insurance Fund.

Expand Exam Cycle for Community Banks

ICBA was gratified when Congress passed in 2018 the Economic Growth Regulatory Relief and Consumer Protection Act raising the asset threshold to $3 billion from $1 billion for those highly rated banks that are eligible for an eighteen-month safety and soundness exam. Subsequently, the Agencies issued regulations implementing the law. The Agencies acknowledged in their announcement accompanying the regulations that extending the examination cycle from 12 months to 18 months for these small banks with relatively simple risk profiles should not appreciably increase their risk of financial deterioration or failure. In order to qualify for an 18-month examination, any bank with total assets under $3 billion—including one with a composite rating of ''good''—must meet the other capital, managerial, and supervisory criteria set forth in section 10(d) of the FDI Act and the agencies' implementing regulations.

Considering the enhanced ability that the Agencies now have to monitor off-site activities, and given the consolidation that has gone on in the industry since 2017, **ICBA believes it is time to increase the asset threshold further to $10 billion. Furthermore, we believe the examination cycle for well-managed and well-capitalized banks should be extended from 18 months to two years.** Both of these changes could be made without jeopardizing the safety and soundness of the industry. Nor would they pose a risk the FDIC's Deposit Insurance Fund. Furthermore, this would allow examiners to focus more of their attention on the safety and soundness of the largest banks.

These changes would provide needed relief to many community banks for whom exams are a significant distraction from serving customers and communities. Several of our members have told us that extending the exam cycle to two years would make the exam process much less onerous and would allow them to concentrate more on making loans and serving customers.

Conclusion

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 [redacted].

Sincerely,

/s/

Michael Emancipator
SVP & Senior Regulatory Counsel