

May 6, 2014

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley, Director
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Mark E. Pearce, Director
Division of Depositor and Consumer Protection

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SUBJECT: Review of FDIC Regulations in Accordance with the
Economic Growth and Regulatory Paperwork
Reduction Act (“EGRPRA”)

This memorandum seeks approval to publish the attached joint Federal Register notice seeking comment on the inter-agency EGRPRA regulatory review plan as well as the first three categories of regulations to be reviewed. Staff has been working with staff of the Office of the Comptroller of the Currency (“OCC”) and the Board of Governors of the Federal Reserve System (“Board”) (collectively, the “Agencies”), to begin a coordinated and comprehensive review of agency regulations in accordance with the requirements of EGRPRA. Publication of this joint Federal Register notice will formally launch the FDIC’s comprehensive review of agency regulations required every ten years by EGRPRA.

Background

Section 2222 of EGRPRA (codified at 12 U.S.C. § 3311), provides that, not less frequently than once every 10 years, the Federal Financial Institutions Examination Council (“FFIEC”) and each appropriate Federal banking agency¹ represented on the FFIEC, must conduct a review of all regulations prescribed by the FFIEC and each appropriate Federal banking agency, to identify any

¹The appropriate Federal banking agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. See 12 U.S.C. 1813(q).

outdated, unduly burdensome or otherwise unnecessary regulations imposed on insured depository institutions.

Working together, the FDIC, the OCC and the Board completed the 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 as required by EGRPRA.² The Agencies must complete the next comprehensive regulatory review under EGRPRA by the end of 2016.

The FDIC has already taken informal steps to initiate this EGRPRA review. In November 2011, the FDIC published a document on its website entitled, *FDIC's Plans to Review Existing Regulations for Continued Effectiveness*.³ In that document, the FDIC committed to publish for public comment in early 2012 a plan outlining the process for the FDIC's next comprehensive EGRPRA review. In satisfaction of that commitment, in April 2012, the FDIC published on its Web site its *Preliminary FDIC Plan to Conduct a Comprehensive Regulatory Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1986 ("EGRPRA")*.⁴ That preliminary plan generally outlined how the FDIC intended to conduct its comprehensive review of its regulations by the end of 2016 and stated that the FDIC would coordinate its efforts with the Board, the OCC, and the FFIEC.

During the last year or so, the FFIEC principals have discussed how the Agencies can best complete the required EGRPRA reviews in a timely fashion. The FFIEC tasked the FFIEC's Legal Advisory Group ("LAG") with the responsibility to coordinate the joint review of all interagency rules and to ensure the timely submission of the required FFIEC Report to Congress. FDIC staff has been working with the staffs of the Agencies (and coordinating with the other FFIEC member agency staffs) to develop a comprehensive plan for reviewing agency regulations in accordance with EGRPRA and drafted the attached joint Federal Register notice, which outlines that plan and seeks comment on several categories of regulations.

² <http://www.gpo.gov/fdsys/pkg/FR-2007-11-01/pdf/07-5385.pdf>

³ <http://www.fdic.gov/regulations/laws/plans/index.html>

⁴ http://www.fdic.gov/regulations/laws/plans/egrpra_plan.html

The EGRPRA Requirements

In conducting the regulatory reviews mandated by Section 2222 of EGRPRA, the Agencies must jointly or individually categorize regulations by type, such as “safety and soundness” regulations. The Agencies have identified other categories as described below and shown in the attached charts. Once the Agencies have established appropriate categories, the Agencies must provide notice and seek public comment on those categories of regulations.

In particular, Section 2222 of EGRPRA requires that the Agencies ask the public to identify areas of their 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 then publish in the Federal Register a notice summarizing the comments received, identifying any significant issues, and discussing those issues. EGRPRA also requires the Agencies to “eliminate unnecessary regulations to the extent that such action is appropriate.”⁵

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 EGRPRA Review Process

For purposes of conducting the EGRPRA review, the Agencies have grouped their regulations into 12 categories, which in alphabetical order are: (1) Applications and Reporting; (2) Banking Operations; (3) Capital; (4) Community Reinvestment Act; (5) Consumer Protection; (6) Directors, Officers and Employees; (7) International Operations; (8) Money Laundering;

⁵ Pub.L.104-208, Sept. 30, 1996.

(9) Powers and Activities; (10) Rules of Procedure; (11) Safety and Soundness; and (12) Securities. Although EGRPRA does not require the Agencies to review our regulations jointly, the Agencies believe that a joint review is the most effective way for the public to consider the totality of the regulations under review and achieve EGRPRA's goals.

Staff recommends that the Agencies publish four Federal Register notices in approximately semiannual intervals, each addressing one or more categories of rules. Each Federal Register notice will have a 90-day comment period. Today, we are proposing to publish the first of these four notices, which addresses the following three categories: Applications and Reporting; Powers and Activities; and International Operations. Consistent with EGRPRA, the notice invites the public to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on insured depository institutions by these regulations. The notice asks the public to limit comments to the specific categories of rules, and comment on other categories of rules when addressed in future Federal Register notices.

We will seek Board approval prior to publishing each of the three subsequent notices. At the conclusion of the comment period for each EGRPRA review notice, the Agencies will review the comments and decide whether further action is appropriate with respect to the regulations included in that notice. The Agencies plan to make this decision jointly in the case of rules that we have issued jointly. Any rulemaking to amend or revise those rules also would be undertaken jointly. For rules issued by a single agency, the issuing agency will review those comments and independently determine whether amendments to its rules are appropriate. If so, that agency will separately initiate a rulemaking to modify its rules. Staff expects to make recommendations, but, in all cases, the Board will decide whether to propose amendments to the FDIC's regulations.

In determining the categories of rules, we sought to divide the regulations into logical groupings that are not so broad that the number of regulations presented in any one category will overwhelm potential commenters. We recognize that we could categorize our regulations in other ways and would welcome comment from the public about the proposed categories and the regulations placed within them. In addition, we would welcome comment from the public on grouping the remaining categories and the order in which to publish them.

To assist the public's understanding of how we have organized the EGRPRA review, the Agencies have listed all regulations included in this review on a chart (a copy of which are attached to the Federal Register notice). The Chart is divided into two parts. The first part presents the three categories of regulations about which we are initially requesting comments. The second part presents the remaining nine categories on which we will seek comment in the future. The categories in the chart are shown in numbered and shaded horizontal bands. In each, the left column divides the categories into more specific subject matter areas. The remaining columns are headed by the different types of financial institutions (*e.g.*, state non-member banks, national banks, etc.).

The FDIC's EGRPRA review process will supplement and complement the reviews of regulations that the FDIC is conducting under other laws and pursuant to our internal policies. For instance, following the FDIC's acquisition of certain regulations of the former Office of Thrift Supervision ("OTS") as required by Title III of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act"), the FDIC is reviewing the transferred regulations to determine whether the transferred regulations should be amended, rescinded, or incorporated into FDIC rules that existed before the transfer. As part of the FDIC's rulemakings in that regard, the FDIC has been inviting comments from the public on whether the proposed rulemakings would impose any outdated or unnecessary regulatory requirements on insured depository institutions.

Moreover, as part of its implementation of the Dodd-Frank Act, the FDIC continues to be engaged in a review of its rules affected by the Dodd-Frank Act. We have been regularly updating, streamlining, or rescinding certain rules to comply with, and conform to, the Dodd-Frank Act. We have also been establishing new rules that promote a stable financial system while seeking to minimize regulatory burden. In many Dodd-Frank Act rulemakings, we are coordinating our efforts closely with the other financial regulators to ensure consistency and avoid duplication of efforts. Although these Dodd-Frank Act rulemakings have been relatively recently adopted (or are in the process of adoption), and related rules streamlined or rescinded, the FDIC sought comment on how those rulemakings should be included and reviewed as part of the EGRPRA review process. The FDIC received no public comments in response to our request, and thus staff proposes to exclude certain Dodd-Frank Act rulemakings from the EGRPRA process (see Appendix A for list of rules to be

excluded). Other rules that were amended in accordance with the Dodd-Frank Act will be included in the general subject matter categories.

Certain FDIC regulations apply only to FDIC employees, concern internal FDIC procedures, or otherwise do not have any direct effect on FDIC-insured institutions, other financial institutions or the public, and, thus, staff recommends that they be excluded from the EGRPRA review. Those regulations are listed in Appendix A.

We anticipate that Federal Register notices seeking public comment on one or more categories of regulations will be published once every six months over a two-year period (2014 – 2016) so that all regulations subject to this EGRPRA review will have been reviewed by 2016. Staff will analyze any comments received and make appropriate recommendations to the Board of Directors concerning any regulatory provisions that should be amended or repealed.

Attached is the first draft joint Federal Register notice, for Board approval, announcing the Agencies' plan to complete the EGRPRA review. The draft notice seeks public comment only on the plan and the first three categories of regulations (as noted above).

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Attachments