May 6, 2024

The Honorable Martin J. Gruenberg Chairman
Federal Deposit Insurance Corporation
550 17th Street, SW
Washington, DC 20429-9990

Re: The Economic Growth and Regulatory Paperwork Reduction Act of 1996

Dear Chair Gruenberg:

As part of the EGRPRA review, commenters were invited to address the impact of the identified rules on community banks and other small, insured depository institutions. There are a number of regulations that are included in the review that "impose outdated, unnecessary, or unduly burdensome requirements on a substantial number of community banks, their holding companies, or other small, insured depository institutions or holding companies." (89 FR 8084.) In fact, as the FDIC indicated in its 2020 Community Banking Study, "if the societal benefits of a thriving community banking sector are to be preserved, it is important that regulations achieve their public policy goals in ways that accommodate, to the extent appropriate, the business models and learning curves of smaller institutions with limited compliance resources." (FDIC, Community Banking Study, 2020.) Further, the Agency speculates that, "regulatory compliance costs may be one of a number of factors contributing, for example, to higher rates of exit from the banking industry by community banks…" (FDIC, Community Banking Study, 2020.)

To begin, I would like to echo some of the comments of prior respondents. A tiered approach to regulation, as introduced by Community Bankers Association of Illinois, is an effective strategy for reducing the burden imposed on community banks and other small institutions. (See CBAI Comment Letter, April 2024.) This tiered regulatory structure should be adopted when appropriate. Also, as noted by the Independent Community Bankers of America, because past cost-benefit analysis considerations performed in the rulemaking process have been flawed and have not arrived at an accurate assessment of the regulatory burden, there is a justification for an independent outside consultant to quantify for the Agencies the regulatory burden imposed on community banks by current federal financial regulations. (See ICBA Comment Letter, February 2024.)

Comments regarding specific regulations included in Round 1 of the EGRPRA:

12 CFR Part 190 - Preemption of State Usury Laws

The request for comment, under the heading of "clarity" asks, "are there specific regulations for which clarification is needed? If so, please identify the regulations and indicate how they should be amended."

Given the recent amicus brief filed by the FDIC in *NAIB et al. v. Weiser et al.*, this regulation should be reviewed to ensure that it is consistent with the statute and the FDIC's current interpretation. Once the case is resolved by the court, additional clarification should be provided through the rulemaking process.

12 CFR Part 304 – Call Reports

The current call report regulation imposes unduly burdensome reporting and recordkeeping requirements on community banks and other small institutions. The agencies could amend the rule in order to reduce this burden on these institutions.

The current "Instructions for Preparation of Consolidated Reports of Condition and Income" (FFIEC 031 and 041) is almost 800 pages long. The statute provides ample flexibility to the FDIC that could be exercised by the agency in order to reduce the burden of the mandated reporting. (12 USC 1817.) Also, the statute indicates that there should be an ongoing effort to streamline reporting and suggests short form versions be utilized where applicable.

In addition to adopting a tiered approach to Call Reporting based on asset size, the agencies should make an effort to harmonize definitions and eliminate duplicative reporting required by the call report, Section 1071, and CRA.

12 CFR Part 362, Subparts A, B, and E - Activities of Insured State Banks

12 USC 1831a, "Activities of insured State banks" provides that, "…an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless … the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund." The current implementing regulation provides an exception which provides that "an insured State bank … may conduct activities prohibited by … this section if the bank obtains the FDIC's prior written consent. Consent will be given only if the FDIC determines that the activity poses no significant risk to the Deposit Insurance Fund." (12 CFR 362.3.)

In order to reduce the burden imposed by the regulations and achieve statutory intent, while supporting the dual banking system and federalism, the regulation should be amended to provide that *activities that are specifically authorized by the law of the state in which the bank is chartered are presumed to pose no significant risk to the Deposit Insurance Fund and do not require prior authorization*.

Expanded Examination Cycle for U.S. Branches and Agencies of Foreign Banks

Since the last EGRPRA Review, the FDIC expanded the number of insured depository institutions eligible for an 18-month on-site examination cycle. Additional steps to reduce the burden of recurring onsite examinations on community banks and small institutions (specifically state non-member banks) should be undertaken, to the extent this can be accomplished without congressional action.

Thank you for the opportunity to provide these recommendations for your consideration.

Respectfully,

/s/

Trey Tagert
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