HOW RED TAPE AFFECTS COMMUNITY BANKS AND CREDIT UNIONS: A GAO REPORT

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TUESDAY, FEBRUARY 27, 2018

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 2:18 p.m., in Room 2360, Rayburn House Office Building, Hon. Steve Chabot [Chairman of the Committee] presiding.

Present: Representatives Chabot, King, Luetkemeyer, Kelly, Blum, Comer, Curtis, Velázquez, Evans, Lawson, Adams, and Schneider.

Chairman CHABOT. Good afternoon. The Committee will come to order. I want to apologize for running a little bit behind but we had votes on the floor, which in unavoidable, and we got over here as quickly as we could.

Our economy is seeing a resurgence. Congress passed and the President signed a historic tax bill into law, and hardworking Americans are starting to see the results in their paychecks. We are also getting people back to work with the unemployment rate continuing to trend downward. Economic progress is being made.

However, we continue to hear from Main Street companies across the Nation that access to capital remains a challenge for them. Unfortunately, research shows that small business lending took a nose-dive during the Great Recession. And while recent progress has been made, lending has not returned to pre-recession levels. Around here, we like to say that capital is the life blood of the small business ecosystem. When acquiring capital, it is challenging the Nation's small business, which create two out of every three new private sector jobs are left in a holding pattern.

A stagnant lending environment hits our smallest firms the hardest because of their reliance on commercial lending to finance their projects. The local community bank and the neighborhood credit union play an outsized role in lending to small businesses. This relationship between the entrepreneur and the small financial institution is critically important.

When the mortgage meltdown in the mid to late 2000s triggered a financial crisis, these small financial institutions did not play a significant role in the crash. However, as a result of the crisis, Congress enacted the Dodd-Frank law, which was intended to improve oversight of the Nation's largest banks.

Unfortunately, many of these requirements and regulations have trickled down to the Nation's smallest financial institutions. A one-size-fits-all regulatory framework is not sustainable for America's smallest businesses. To gain a clearer picture of this financial regulatory environment, I asked the GAO, the Government Accountability Office, to examine the red tape that impacts community banks and credit unions. The results of this examination is what we are here to discuss today.

GAO has finalized the report and they are ready to share it with us. I am looking forward to hearing about the specific rules and regulations that are impacting these smaller financial institutions. Additionally, I am interested to learn more about the tools available to financial regulators to reduce burdens.

Overly burdensome red tape is a real threat to entrepreneurs, start-ups, and small businesses. That is why I introduced H.R. 33, the Small Business Regulatory Flexibility Improvements Act, last year. H.R. 33 was included in a larger regulatory package, H.R. 5, that passed the House in a bipartisan manner last January. I encourage the Senate to move this legislation forward as soon as possible.

Again, I want to thank the GAO for joining us today and for the work that they put into this report. In order for small businesses, entrepreneurs, and start-ups to create the next great American product or service, the flow of appropriate and prudent capital must be as free as possible of regulatory red tape.

I would now like to yield to the ranking member for her opening remarks.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Bear with me, I am under the weather. A decade ago our nation faced one of the greatest economic downturns in history, and stared into the abyss of another Great Depression. Countless Americans lost their homes. Credit markets, including small business lending, froze, and millions of jobs evaporated. After taking extraordinary steps to stand the losses and stabilize the economy, Congress enacted the Dodd-Frank Act in July 2010 to address the loopholes that caused the collapse.

The law established strong new standards for the regulation of large leverage financial institutions. It also made the protection of consumers seeking mortgages and credit products a top priority. While the new safeguards were directed primarily at the largest financial services firms, we often hear that small banks were indirectly affected by higher compliance costs.

It is also undeniable that small lenders bear less responsibility for the financial crisis, and therefore, should not carry the brunt of new regulations. For these reasons, significant efforts were made to mitigate any new regulatory burden on small banks.

First, many Dodd-Frank provisions apply only to institutions with over $10 billion in assets, exempting over 98 percent of all banks in the U.S.

Second, regulations created by the Consumer Financial Protection Bureau, or CFPB, that do apply to small financial institutions are subject to the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. Together, Dodd-Frank and the creation of the CFPB have put us on a path to restore accountability and stability in our financial system, giving regulators the tools to prevent harmful bailouts and establish new rules to protect consumers from abusive financial practices.

Data from federal regulators also points to a more vigorous business lending market. The Federal Reserve has found lending standards for small firms have eased considerably since the recession, while loan balances at community banks have increased over 7 percent in the past year alone.

Credit unions have also been striving. Long portfolios grew nearly 3 percent in the third quarter of 2017, resulting in year over year growth of 10.5 percent. While the small business lending environment appears to be robust, critics of Dodd-Frank continue to point to complying costs as approved of onerous regulations. But as the GAO concluded, much of these costs stem from a misunderstanding of the rules, not the rules themselves.

Equally important, the GAO found in its survey that the regulations serve important public benefits, such as enhancing transparency and preventing discrimination. While regulations implemented under the act will ultimately impact many facets of the financial industry, the economy has been improving at a greater pace since its passage. Private employers have created 12 million jobs and unemployment has been greatly reduced.

The housing market is also recovering, as small business credit has returned to pre-recession levels in many sectors. As both lenders and borrowers, small businesses have much at stake when it comes to financial regulatory reform. The Dodd-Frank Act touches on all aspects of the financial industry, and has the potential to make the entire system more stable and safer for small firms and the economy to grow and create jobs. While we must always be aware of how new regulations impact the small firms, under no circumstances can we return to the conditions that led to the 2008 crisis.

In that regard, I look forward to hearing the recommendations of GAO, and having a full discussion about small lenders' experience, and how we can ensure the law works to protect and preserve our small business sector.

Thank you, and I yield back.

Chairman CHABOT. Thank you very much. The gentlelady yields back. And if committee members have opening statements prepared, we would ask that they be submitted for the record.

And I will just take a moment to explain our timing lights, et cetera. They are pretty simple. The green light will be on for 4 minutes, and then the yellow light will be on for a minute, that is 5 minutes, and the red light will come on and we would ask you to kind of keep within that, but since we have one witness, if you take a little more time, I think we will be okay with that. And we will then followup with 5 minutes questioning going back and forth for each side.

And so I would now like to introduce our witness today, it is Mr. Michael Clements, who is a director within the financial markets and community investment group at the U.S. Government Accountability Office. During his extensive tenure at GAO, he studied financial regulations within the Securities and Exchange Commission, the Federal Reserve System, and their Federal Deposit Insurance Corporation. Additionally, he has worked on broadband, communications, and telecommunications issues for GAO.

Mr. Clements hails from the great State of Ohio, and has an undergraduate degree from that fine institution in southern Ohio, the University of Cincinnati, which happens to be in my district. Additionally, he has two graduate degrees from the Ohio State University as well.

I want to thank you for being here today, and you are recognized for 5 minutes, Mr. Clements.

STATEMENT OF MICHAEL CLEMENTS, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.

Mr. CLEMENTS. Chairman Chabot, Ranking Member Velázquez, and members of the committee. I am pleased to be here today to discuss our recent reports addressing regulatory burdens encountered by depository institutions and the processes to mitigate those burdens, including our report on community banks and credit unions that the committee is releasing today.

My statement highlights two key topics from our reports. First, the regulatory burdens that community banks and credit unions identified as most significant. And, two, the requirements for financial regulators to assess the burdens associated with their regulations. Our work highlights the need for financial regulators to improve their analyses of regulatory burden.

In the way of background, community banks and credit unions are generally small entities, most with assets less than $1 billion, that serve limited geographic areas. These institutions focus on traditional depository activities, namely, taking deposits and making loans. And, most importantly, for this committee, community banks allocate a greater portion of their assets to small business loans than large depository institutions.

Moving to our first key topic, the regulatory burdens that community banks and credit unions identified as most significant. Like all depository institutions, community banks and credit unions are subject to a variety of regulations. These regulations include safety and soundness reviews, to among other things, protect the Federal Deposit Insurance Fund. Consumer compliance reviews to ensure that institutions adhere to relevant consumer protection statutes, such as truth in lending. And Bank Secrecy Act Anti-Money Laundering, known as BSA/AML reviews, to help safeguard the financial system from use by criminal enterprises and terrorists.

While these regulations have public interest benefits, they also impose burdens on depository institutions. In our interviews and focus groups with over 60 community banks and credit unions, the institutions identified three prominent regulatory burdens.

One, mortgage transaction reporting under the Home Mortgage Disclosure Act. Two, mortgage disclosure and closing requirements under the Truth in Lending Act, and Real Estate Settlement Procedures Act. And, three, BSA/AML recordkeeping and reporting requirements.

Among other things, the institutions characterized these regulations as complex and time consuming. For example, the institutions noted that identifying terrorism financing under BSA/AML was not a core competency for their staff. Moving to our second key topic, the requirements for financial regulators to assess the burdens associated with their regulations.

The Regulatory Flexible Act, or RFA, requires regulators to examine burdens on small entities during the rulemaking process. Among other things, regulators must consider regulatory alternatives that will achieve the statutory objectives while minimizing burdens. We identified a variety of weaknesses in the regulators' RFA activities, including limited evaluation of economic effects and alternative regulatory approaches and missing information on the cumulative economic impact of regulations.

The Economic Growth in Regulatory Paperwork Reduction Act, or EGRPRA, and RFA require regulators to conduct retrospective reviews, these are a look back. EGRPRA requires certain financial regulators to assess every 10 years whether their regulations are outdated, unnecessary, or unduly burdensome. RFA requires regulators to review within 10 years certain rules to determine if they should be continued without change, amended, or rescinded.

Here again, we found weaknesses in the regulators' activities, including a lack of policies and procedures for conducting retrospective reviews and analyses lacking quantitative data. The weaknesses we identified can hinder the financial regulators' ability to lessen burdens on community banks and credit unions.

To conclude, financial regulations provide public interest benefits, but they also impose burdens on depository institutions. However, financial regulators are required to assess these burdens on small depository institutions. While we identified weaknesses with the regulators' processes, we also provided 20 recommendations that should help the regulators improve their processes, and thereby mitigate, where appropriate, burdens on small depository institutions.

Chairman Chabot, Ranking Member Velázquez, and members of the committee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

Chairman CHABOT. Thank you very much. And I will begin by—I recognize myself for 5 minutes to kick off the questions here. Which regulations did you find particularly burdensome to community banks and credit unions, and how do these regulations in turn adversely impact, or how could they adversely impact small businesses?

Mr. CLEMENTS. The three regulations that where we saw a consensus on from the 60-plus institutions we interviewed were, one, the Home Mortgage Disclosure Act requirements. The second was mortgage disclosure and closing requirements, and then finally the BSA/AML requirements.

In general, the institutions described all of those as sort of time-consuming to take care of, they are complex. At times, if there is any change to the regulation, what needs to happen then is the institution needs to retrain its staff, it may need to upgrade its computer systems to handle new forms, and those are the types of burdens that were reported to us.

Chairman CHABOT. Okay. Thank you. And just a second part of the question then. So how would those, in all likelihood, adversely impact or waste time for or make it tougher for them to get a loan or whatever the ramifications might be for small business, if these regulations are kind of affecting the financial institutions and banks and credit unions? How would the, you know, small businesses going in to get a loan, how would they be affected by that?

Mr. CLEMENTS. In some of our past work, the institutions have mentioned that is a hindrance to their ability to do that. We have ongoing work for you now that is going to look empirically at testing whether regulatory burdens are influenced and how they influence the levels of small business lending, and we hope to get that work to you in several months.

Chairman CHABOT. Okay. Thank you. How is it that Dodd-Frank, which was supposedly targeted at the so-called too big to fail financial institutions, the big guys, how has it affected the smaller community banks and credit unions, and then of course, small businesses as a result of that across the country, would you say?

Mr. CLEMENTS. I would mention the two mortgage-related burdens that were cited. One, the changes in the Home Mortgage Disclosure Act, and then also the closing and mortgage disclosure within Truth in Lending Real Estate Procedures Act. Those were two things affected by Dodd-Frank. There are exemptions on both of those, but some of the institutions did mention those as being burdens.

Chairman CHABOT. Okay. Thank you. What are the principal flaws—and I am just going to give you a couple of them, and I will go one by one. What are the principal flaws in the CFPB would you say at this point? What kinds of things did you pick up on or are in your report?

Mr. CLEMENTS. We made a couple of recommendations in a couple of reports to CFPB. One in terms of the mortgage disclosure and closing requirements that fell within what is called Truth in Lending Act, Real Estate Procedures Act, integrated disclosure. And the idea here was to put all the forms within one form, make it easier for the consumer.

Sometimes what we have seen is that the institutions find some guidance confusing, and so what we have recommended to CFPB was, do an evaluation of that guidance, make it clear for the institutions so it is a little easier. Again, it is the framework of saying, what you are doing is a good idea, but we need to reduce the burden on the institution so we can still achieve the statutory goal, but keep the burden as small as possible on institutions. So that would be an example for CFPB, and one of our recommendations.

Chairman CHABOT. Okay. How about the BSA, the Bank Secrecy Act?

Mr. CLEMENTS. The concerns here, again, are the time of doing it, the complexity of it. Institutions, especially smaller ones, the decision of whether to file a suspicious activity report, sometimes that can be confusing for them. Again, the burdens they have described is continually increasing, what is being asked for, and again what that requires, training of staff, at times, upgrading their systems. Those are sort the burdens that they are encountering in that environment.

Chairman CHABOT. Okay. And in the short time I have left, how about the Home Mortgage Disclosure Act. Were there any particular areas there that were of concern or that you noticed?

Mr. CLEMENTS. Again what the institutions were mentioning to us was the timeframe of doing the reviews, the complexity of it, whether a transaction should be reported or not. There are also concerns about if there was an error made, the extent to which the whole set of data would need to be resubmitted. And the FFIEC has made some adjustments to that, which should reduce some of those burdens.

Chairman CHABOT. Thank you very much, my time is expired. The ranking member is recognized for 5 minutes.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Mr. Clements, isn't it true that 90 percent of community banks that have less than $10 billion in assets are excluded from Dodd-Frank requirements?

Mr. CLEMENTS. I don't know the exact number, but there are various levels for different rules that banks would be exempted from, but I don't know whether they are 90 percent.

Ms. VELÁZQUEZ. Well, small community banks, those with $1 billion or less in assets, right, do not have to comply with Dodd-Frank. And then when those of us on the Financial Services Committee passed Dodd-Frank, we exempted from those requirements banks with assets of less than $10 billion. So 90 percent of all community banks are exempted.

But let me ask you, to what extent are home data essential to the enforcement of fair lending laws and regulations? Are there viable alternatives to the home data?

Mr. CLEMENTS. There are certain public interest benefits to those data. I think, the institutions we talked to, also CFPB has mentioned things such as allowing local officials to allocate dollars for community development, but also, as you mentioned, to ensure, to monitor and detect and prevent discriminatory lending practices. Clearly, that is a benefit and was mentioned relatively frequently.

The regulators we spoke to really don't know of comparable data that exists that would be as efficient. So in their view, it is an efficient data source to serve those two purposes.

Ms. VELÁZQUEZ. Thank you. In a letter to Secretary Mnuchin, Congressman Royce and I raised the need for law enforcement to provide feedback to financial institutions on effectiveness of their SARs. GAO concluded the same, and recommended as much. How would implementing a process to provide financial institutions with feedback improve compliance?

Mr. CLEMENTS. Well, there were certainly concerns among the institutions we talked to, lack of understanding, what the data are being used for. That was a common theme that we have heard during our interviews and focus groups.

Ms. VELÁZQUEZ. So what is needed to facilitate greater communication from FinCEN, is a better relationship between law enforcement and financial institutions? Do you have any recommendations?

Mr. CLEMENTS. It was not in the scope, so we did not do that.

Ms. VELÁZQUEZ. Okay. An area of regulation that was cited as burdensome was mortgage lending. In your discussions with financial institutions, did they identify specific aspects of the mortgage rules that were particularly burdensome, if so, which ones?

Mr. CLEMENTS. So within the closing, the mortgage disclosure, there are two closing processes, I think a couple of things that came out. One is what they view as just complexity and the time to do the forms. A lot of this was a combination of a variety of forms from Truth in Lending, Real Estate Procedures Act, that put it into an integrated form. So what the requires is new training for their staff, upgrades of the computer systems to be able to file the forms. That is one problem.

They also cited some of the timeframes that are required, the 3-day timeframes, which they believe could extend closing times. And, finally, they had concerns with perhaps being responsibile for third party fees that may change. So, for example, if an appraisal fee changed, that they may be responsible for that. Those were three main concerns that they expressed, at least in terms of that closing process.

Ms. VELÁZQUEZ. Okay. Mr. Chairman, I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back. The gentleman from Utah, Mr. Curtis, is recognized for 5 minutes.

Mr. CURTIS. Thank you, Mr. Chairman.

Mr. Clements, thank you for being here today and being with us. As a former small business owner, I am aware of the difficulty of complying with some of these regulations and having the staff to meet those compliances. And I find that sometimes strategies to—rather than hire the staff to help you know if you need to comply to just over-comply.

Are you seeing any evidence of that with our community banks, that that is, because they don't have the staff they are actually over-complying with some of these regulations?

Mr. CLEMENTS. We certainly found that in the case of the TRID, the integrated disclosure. In fact, what we found was they were doing things they really didn't need to do, part of that was driven by what we thought was unclear guidance from CFPB in terms of what they needed to do. And so, again, that fell within our recommendation to CFPB. Evaluate your guidance. Rethink about it and come out with better guidance so that the businesses do understand what they need to do and what they don't need to do, because we don't want to have them doing extra work.

Mr. CURTIS. Yeah. Is it—I am told that sometimes these investigators are—they have quite a bit of leeway in what they go forward and what they look at, and that sometimes the less experienced ones are assigned to the smaller institutions in almost a training capacity. And is it possible that in some cases we are actually asking more of these smaller banks, and is there—is that discretion a problem in the case of the investigators?

Mr. CLEMENTS. A number of the institutions have mentioned that they thought they were being asked or being held out to a higher standard. It is difficult to test it. What we did do, is we looked at 28 examination reports and tried to find out, were the small institutions being granted the acceptance they were allowed to be, and we did end up finding that.

Mr. CURTIS. You say they were?

Mr. CLEMENTS. Yes, we did not find any evidence where these 28, now, I am not saying that there could not be cases where——

Mr. CURTIS. Is there a pattern of assigning the new guys to the smaller institutions?

Mr. CLEMENTS. That I don't know.

Mr. CURTIS. That would be interesting to find out and may help us understand that complaint.

Mr. CLEMENTS. We would be happy to look at that and submit something for the record.

Mr. CURTIS. As I understand it, in Section 1002 of Dodd-Frank, it explicitly gives the CFPB the authority to exempt credit unions from certain regulations and smaller institutions. Do you know if they are taking advantage of that?

Mr. CLEMENTS. Again, that is one I don't know.

Mr. CURTIS. Okay. It has been told to me that we are losing a number of these smaller institutions, and that concerns me, especially in rural parts of our country, where, as you mentioned, the types of loans that they are doing are so important for the economy. Do you have any data on exactly how many of these smaller institutions we are losing, or is there any information you have on that?

Mr. CLEMENTS. We are aware of the general trend, for example, that have been reported on and the decreased number. We did not do that for this report. We have ongoing work for the chairman that is actually looking at whether regulatory burden is contributing to closure of branches and institutions. And, again, we should have that within the next couple of months.

Mr. CURTIS. Yeah. Thank you. That would be actually very interesting. And is it fair to say that that would disproportional impact rural America?

Mr. CLEMENTS. If that is where most of the smaller institutions are. I should mention, we have also a report we released yesterday on de-risking, so this is related to the BSA/AML, where we did find that institutions are considering BSA/AML compliance in decisions to offer services, and in fact, what we also found was in communities or counties where money laundering was seen as a greater risk, in fact, they were losing depository institutions at a faster rate than other areas.

Mr. CURTIS. Very interesting. And the consumer is the loser in that scenario. So, okay. Thank you very much. I yield my time.

Chairman CHABOT. Thank you. The gentleman yields back. The gentlelady from North Carolina, Ms. Adams, who is the ranking member of the Subcommittee on Investigations, Oversight and Regulations, you are recognized for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman, and thank you Ranking Member Velázquez for hosting the hearing today and, thank you, Mr. Clements, for your testimony. Some complaints by respondents suggest that there is a real misunderstanding of how the regulations apply. How could such simple things like outreach from regulators reduce the compliance burden on small community leaders?

Mr. CLEMENTS. I think one of the cases where we heard this was in the case of the TRID, the integrated disclosure where the institutions simply did not understand requirements that were being asked of them, and what types of transactions needed to be reported. And what we found was that the guidance was not necessarily clear to them. And, again, what we are recommending to CFPB is to go back, evaluate that guidance, and prove it such that the institutions do understand what their obligations are.

There was confusion, for example, there are various timeframes within the closing process, 3-days. Some of them thought, well, if there was a change, I need to go all the way back to the beginning. Well, no, not necessarily. But, again, there was confusion based upon unclear guidance from CFPB.

Ms. ADAMS. Thank you. You found that participants in one focus group said that regulators should better communicate how the information that institutions submit contribute to law enforcement's successes in preventing or prosecuting crimes. This is not the first time that we have heard such a recommendation in this committee.

Could you elaborate on this particular issue and whether it was something that you detailed for the relevant agencies involved?

Mr. CLEMENTS. Again, I think we did hear concerns about institutions not understanding why they were being asked to collect information, how that information was being used. We don't have a recommendation in that area to rise to the level for this report, but we acknowledge that there needs to be a better understanding of what is happening, how those data are being used.

Ms. ADAMS. Okay. So you don't have any recommendations?

Mr. CLEMENTS. We do not have a recommendation in this particular report related to communication.

Ms. ADAMS. All right. Well, thank you very much.

Mr. Chair, I yield back.

Chairman CHABOT. The gentlelady yields back. Thank you very much. And the gentleman from Mississippi, Mr. Kelly, who is the chairman of the Subcommittee on Investigations, Oversight, and Regulations is recognized for 5 minutes.

Mr. KELLY. Thank you, Mr. Chairman. And I guess my first question is, with the CFPB did—in your report or in your findings, did you find that the availability of smaller loans—I am from a very rural area of my State, and so we deal with a lot of small banks.

And did you find that the availability of small loans to consumers has been reduced because of the—larger companies don't take those small loans, it is easier to take big loans with lots of margin rather than to take those $40,000 or $50,000 home mortgages. Did you find that in any of the report or any of the things that did you?

Mr. CLEMENTS. A number of the institutions mentioned that they had decreased lending, I can't say whether it was for small loans or not, that I am unsure about. Again, we do have some work ongoing for the chairman, looking at the extent that regulatory burden is contributing to any type of change in small business lending.

Mr. KELLY. Let me just—I would really hope that you would look at that because what happens is big companies like to—like to take that business, the lucrative, the stuff that is good, but they like to leave out the availability to lower people who can't get it anywhere else. And when the small banks go away or the small credit unions, those opportunities are no available because the big businesses don't need that to stay in business.

Second, I want to talk about small banks. I have seen the regulations, are I think are five 5-inch binders or something like that when printed out, and did your findings find that small banks or those smaller banks, even those under the $10 billion limit, they still have to go through and make sure that it doesn't apply to them. Did you find that they were able to afford the staff, the professional staff, which would mean lawyers and accountants and all kind of other things, did you find that they had the ability, without raising costs, to be able to do those things for their customers and retain the customer base that they had?

Mr. CLEMENTS. Again, with our interviews and focus groups, I think those were the concerns, that either increasing the staff, finding qualified staff, perhaps also doing outsourcing, those were concerns that were raised to us among some of the smaller community banks and credit unions.

Mr. KELLY. I can tell you from being with my bankers and credit unions in my town, that many of them don't have the overhead to employ extra lawyers or extra people who are just compliance agents, and so the net cost is is that that has to passed on in one of two ways. That either means the bank has to eat it as zero margin, which means no profit, or they have to pass that on to the smaller consumers, which makes loans more expensive.

Over the review, did you find out—although it is supposed to save money and save the consumer, did you find out whether it costs a consumer more or less to do all these rules and regulations by smaller banks?

Mr. CLEMENTS. That was beyond the scope of this report. Again, I would refer back to the work that we are doing for the chairman, it will come out in a few weeks or a few months, sorry, that is looking at issues such as regulatory burden's impact on lending, impact on number of institutions, and also the profitability of institutions.

Mr. KELLY. And the other thing, did you find any instances, because I have heard a couple, I think, from bankers where they felt like the CFPB was being punitive in just the charges that they levied, and even the amount and the ability to fight the rules and regulations and the interpretations by a huge agency, that it was easier just to surrender and pay the fine rather than to fight them with all the burdens, it would have cost them more to defend than it was to pay. Have you found that in any of the situations in which you investigated?

Mr. CLEMENTS. I don't recall anybody mentioning that. Again, the burdens really came down to the time and the complexity of doing the work, and then having the trained staff and the constant need to upgrade computer systems and response to changes, are the main things we heard.

Mr. KELLY. Okay. And then my final question is, do you believe that these regulations impact rural communities in a more unfavorable way than they do the urban and larger communities?

Mr. CLEMENTS. I don't think we specifically looked at that, I guess what my comment there would be is, to the extent that smaller institutions are in more rural areas, and the regulations can have an outside affect on smaller institution, then that would be the case.

Mr. KELLY. And you would agree to me that the regulations and rules, even if they don't apply to a smaller bank because they are under the size, that there is still a cost to go through and make sure that it does not apply to that bank, you still have to do the same work almost, at least to make sure it doesn't comply, which is not within the overhead of what you are used to doing.

Is that true or false?

Mr. CLEMENTS. They would have to do that at least once to understand whether they were subject to those rules or not. And, again, I think, going back to the CFPB example, if the guidance is clearer for them, it should be easier for them and there wouldn't be as much guess work whether something needs to be reported or whether they are responsible for that.

Mr. KELLY. Mr. Chairman, my time is expired. Thank you.

Chairman CHABOT. Thank you very much. The gentleman's time has expired. The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I appreciate this hearing. And, Mr. Clements, I appreciate your testimony.

In listening to Mr. Kelly's question about a 5-inch binder for mortgage lending, I remember going into a local bank in my district before Dodd-Frank and they showed me about a 5-inch binder for mortgage lending, and they said, that is a small local bank, and they still are in business, by the way, and they said, we had to hire one personnel to get up to speed on Sarbanes-Oxley.

And now here we are with Dodd-Frank. On top of that, I have not had them present to me the stack of that binder because I suspect that it is electronically housed and harder to measurer these days. But I wanted to make that comment into the record, and then ask you, did you find in the examination that you did, a particular advantage for either of the credit unions or the community banks, one over the other, once you compared their regulatory burden?

Mr. CLEMENTS. No, I don't think that was the case. The concerns that were expressed to us in terms of some of the mortgage disclosures and the BSA/AML, the burdens tend to be pretty consistent. The concerns raised to us were pretty consistent—it was really a small institution, whether it was credit union or community bank issues.

Mr. KING. If I were to ask them, they would probably say, we are facing the same regulations but not the same tax rate. And that is a different question, I understand.

Mr. CLEMENTS. Yes.

Mr. KING. But that also needs to be said. Do you agree with that?

Mr. CLEMENTS. Those are beyond—we didn't look at the—we didn't look at the difference between those institutions.

Mr. KING. When you are looking at these regulations, did you also evaluate the impact of them? Could you quantify what kind of inadvertent errors or what kind of customer victimization might have taken place had it not been for these regulations?

Mr. CLEMENTS. No, it is very difficult to hypothetically say what would happen. Again, in terms of the impact, I would go back to our work coming up for the chairman, that looks at whether regulations are affecting lending, whether they are affecting availability of credit in terms of having branches, and the profitability of the institutions.

What we are trying to do is empirically test that and move beyond what we are sort of being told, and look at the data and get to some answers to that.

Mr. KING. And I think that, you know, within those limitations, I don't take issue with that. I would just say that the baseline would be laissez-faire, and then as we added regulations in each of these cycles, those prior to Sarbanes-Oxley, Sarbanes-Oxley, Dodd-Frank, each of those components, would you agree, that every time that regulations are promulgated and implemented that it does cost somebody, as Mr. Kelly said, to comply?

Mr. CLEMENTS. Each additional activity is going to involve some level of burden. It could be a one-time change, it could be ongoing. It depends upon what is being asked. If it is a matter of altering a form, you might need to change your computer system, you might need to do some training, but that's one time. If there is extensions of BSA/AML in terms of what you need to watch for, that could be ongoing. So it depends upon what is being asked.

Mr. KING. Did you ever encounter a new regulation that once a company, a business was set up to comply with that regulation, that it actually got easier for them rather than another burden? Did it ever take some load off of business?

Mr. CLEMENTS. We didn't—I don't think we heard that.

Mr. KING. I have not encountered that either. In a way I am just setting this up because I thought I remembered it verbatim, but I looked it up. So I want to—looking back at James Madison's Federalist 62, and it is just important that we think about these things as the years of our civilization go on and the stack of regulations go up.

He wrote then in Federalist 62, James Madison. It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read or so incoherent that they could not be understood. And just those words we should remember as we go forward growing this government, and what you have offered here is always, I think, an objective look at what we have.

And I would pose to this committee that I put an amendment on the REINS Act here, I guess it would be last summer, the REINS Act. Are you familiar with that, Mr. Clements?

Mr. CLEMENTS. No, I am not.

Mr. KING. Just shortly, it is an act that was put together by a gentleman from—Jeffrey Davis from Kentucky—years ago, that requires that any regulation that is promulgated has to have an affirmative vote of Congress if it has more than $100 million in impact on our economy. I put an amendment on there that required all the existing regulations, 10 percent a year be served up to Congress asking for an affirmative vote before they can continue as having the force and effect of law.

And so I would just use this time to thank you for your testimony, but also make the case that I think we need to go deeper into this regulation and to find more ways to reduce regulation. And the best place that we can get these answers, aside from this GAO report, is to the people that are subject to the regulations and looking at their recommendation. And that is why I think that language and that amendment would be so important.

Thank you, Mr. Clements. I appreciate your testimony. Thank you, Mr. Chairman. I yield back.

Chairman CHABOT. Thank you. The gentleman yields back. And the chair appreciates the gentleman's reference to the Federalist Papers in this hearing room today. We haven't heard that in a while, and we appreciate it.

The gentleman from Florida, Mr. Lawson, who is the ranking member of the Subcommittee on Health and Technology, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman. Mr. Clements, welcome to the committee.

I know you might have responded to this earlier. I haven't been up in Congress long, but ever since I have got up here in Congress, I had some of the community bankers tell me about Dodd-Frank.

So the question I had is, we have heard on many occasions that the Dodd-Frank Act is the reason for many of the ill things that are facing our community banks. Can you explain how the act has had the opposite affect in reducing costs and increasing transparency?

And I hate to have you to go back over it again, but I was caught right in the middle and didn't know, really, what to do. And I am trying to learn more and more about it as time go on, because community bankers was telling me back home all of the tremendous amount of paperwork and all of the stuff they had to do, which would distract them from what they are doing.

So I just said if I don't get but one question in, I need to get that one in.

Mr. CLEMENTS. In terms of the transparency, one of the things I would cite on the consumer side is more clarity on closing.

It is easier for the consumer to get their closing document in one place. It is more plain English language for them. On the institution side, I believe Dodd-Frank made changes to the insurance rate for Federal Deposit Insurance, which provided some benefits to smaller institutions. Those would be two.

Most of our work looked at what were the burdens facing institutions. So I think similar to what you are hearing, what we sort of heard were the burden side.

Mr. LAWSON. Okay. And I looked in the staff report, which I was really concerned, and you might have already commented on that, too, and they were saying the majority claimed that Dodd-Frank is harming small financial institutions and lending as to the economy; however, the facts telling a different story. They say that, you know, banks, credit unions and stuff are making profits, and so forth.

So the word that we had coming from the commercial side, it doesn't seem to be panning out of what the staff did research on. That it is just the opposite.

Could you tell me what is happening, the reason why staff would do research and say that everything is booming, they are making more profits, they already make more loans and everything, and it is not commensurate with what some of the institutions are saying. If it makes any sense.

Mr. CLEMENTS. I don't think we have done work on that.

Mr. LAWSON. You haven't done any work to determine how Dodd-Frank might be hurting the commercial banking interest?

Mr. CLEMENTS. Well, the burdens we cited, there were three burdens.

Mr. LAWSON. Right.

Mr. CLEMENTS. As I mentioned, two burdens on the Dodd-Frank side. One would be the Home Mortgage Disclosure Act and some of the extra requirements there, and then also the mortgage disclosure and closing requirements were the two burdens that the community banks and credit unions that we interviewed, the focus groups, had mentioned.

And, again, a lot of that was in terms of the time to do the work, the paperwork requirements, the complexity of it, which could lead to new training of staff, changes in computer systems. Those were the burdens that were cited.

Mr. LAWSON. Okay. And then the $10 million question: Should Dodd-Frank be repealed all together?

Mr. CLEMENTS. That is beyond the scope of what we did. It is really a policy question that I would defer to the Congress to make. We are providing you with information ultimately.

Mr. LAWSON. Okay. And I guess even though there have been a vote already, you know, but I was just trying to—if it was really helping the consumer and it was a clash then between the consumer groups and the financial institutions. You know, but I was trying to find out where—maybe eventually I can ask the chairman—where did it hurt? I still haven't been able to ascertain how did it hurt the financial institutions other than what you stated earlier.

And that is the only thing, because—well, I will tell you what, Mr. Chairman, then I yield back.

Chairman CHABOT. Would the gentleman yield for—you have got a few minutes—or 30 seconds left?

Mr. LAWSON. Yeah.

Chairman CHABOT. I think what we hear a lot is that even though they weren't directly—as far as the legislation goes—it wasn't suppose to affect them, as a practical matter, it does. Because many of them, there are best practices, they are concerned with how they are going to be, you know, what the regulation is going to be and the supervisory capacity. If there is basically a trickle-down effect on all the small guys, We better do this or we are going to get in some trouble.

So all the smaller community banks and credit unions are complying with it even if, you know, technically, they may not have to, they virtually all do. That is my understanding.

And you could talk to, probably, the folks in your district, hear from them directly, but that is what we have heard.

Mr. LAWSON. Okay.

Chairman CHABOT. Thank you very much. I appreciate the gentleman for yielding.

The gentleman's time has expired.

The gentleman from Missouri, Mr. Luetkemeyer, who is the vice chairman of this committee is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. And interesting discussion. You know, to answer some of the previous questions, I served as the chairman of the Financial Institutions Committee and the Financial Services Committee, so this is right square in the middle of my wheelhouse.

And I can tell you that Dodd-Frank free checking was—75 percent of the banks had free checking. Now, it is down to 37 percent. Small loans to small businesses have dropped 15 percent as a result. This is not my numbers. These are Fed studies—or banking groups that have done these studies.

Small banks, many of them no longer make home loans. They have got completely out of the business. So these costs are driving banks out of business, credit unions out of business. We are losing one institution a day in this country because of the rules, regulations, and costs affiliated to them that Mr. Clements has identified.

If I have some extra time here, I can go into a lot more detail, but what it does, and the bottom line is, it costs access to credit for consumers, and the credit they do have is more expensive. And that has been documented.

Mr. Clements, with regards to the EGRPRA, which is the requirement that all of the different agencies do a review of all their rules and regulations every 10 years. There is on the floor today, or will be shortly—well, we had the rule a while ago, and we will have a vote probably next week on the bill that actually changes it from 10 years down to 7. And it brings into this the CFPB and the credit union regulators.

What was your finding with regards to that. I know that there is some information in here, but give me your impression of how the different agencies are complying with that rule.

Mr. CLEMENTS. Sure. So EGRPRA applies to OCC, the Federal Reserve.

Mr. LUETKEMEYER. Right.

Mr. CLEMENTS. And FDIC. It does not apply to CFPB——

Mr. LUETKEMEYER. Right.

Mr. CLEMENTS.—which is one of the limitations we had noted in the report. We talked about the burdens we had heard about, 2 of 3 were related to CFPB. Two other weaknesses that we had found within the EGRPRA analysis: One was a lack of quantitative data. So to some extent, the regulators looked at the comments they received. Either agreed with them or disagreed with them and moved on. But what we are suggesting, and we have recommended, is that they do more of a quantitative analysis. And again, we are basing the criteria on executive orders and OMB guidance.

And the other thing we noticed was a lack of consideration of the cumulative effect of regulation. And we refer to that in our report in terms of bodies of regulation.

Mr. LUETKEMEYER. Were they looking at the cost benefit analysis of those rules and regulations?

Mr. CLEMENTS. I am sorry?

Mr. LUETKEMEYER. Were they looking at the cost benefit analysis of those rules and regulations as they were putting them on the books? Were you reviewing that to see if they were doing that?

Mr. CLEMENTS. I would have to get back with you on that. Off the top of my head, I don't know that.

Mr. LUETKEMEYER. Okay. As you were going through this, I know one of the things you were looking at is the HMDA, that is, Home Mortgage Disclosure Act. And, you know, Mr. Kelly was talking about that and a couple other folks with regards to the size of the documentation that is now required whenever you close a home loan, and is actually, you know, driving a lot of the home loan lenders out of business.

Did you look at the rules and regulations themselves to see how burdensome they were, how duplicative they were, how superfluous they were? What was the extent of your analysis of HMDA?

Mr. CLEMENTS. For the most part, what we did is relied on the interviews and focus groups telling us what the concerns were. We did look at it, but we did not make an independent evaluation of, was that correct, was the level of regulation correct?

Mr. LUETKEMEYER. So what analysis did you come up with with regards to that then?

Mr. CLEMENTS. With the concerns that the institutions made to us were it was time consuming to do it, it is confusing to identify which transaction you might need to record. There are concerns about the error submission. So if there where was an error, and it hit some threshold, that the entire dataset needed to be resubmitted. Those are some of the concerns.

And then there was the changes that had been implemented in terms of additional transactions that had to be reported such as lines of credit, and then also the addition of a fairly significant number of data fields.

Mr. LUETKEMEYER. Did you look at the way that these HMDA rules and regulations are enforced? Did you look at the punitive nature by which the regulators are enforcing the rules on this particular act?

Mr. CLEMENTS. No. Again, in terms of that, in respect to that question, we relied on what the community banks and credit unions were telling us.

Mr. LUETKEMEYER. So how can you adequately analyze whether these rules and regulations are appropriate, whether somebody is doing a good job of promulgating and enforcing if you don't look at the ability to—if these folks are not doing a cost benefit analysis? If you are not looking at how they are enforcing them, either by whatever tactic they are using to force the bank to change what they have been doing, or if they are being so punitive as to fine them? I mean, none of that was part of your review or your study?

Mr. CLEMENTS. In terms of what we did, we have heard that institutions have mentioned they were being held to standards that they were not required to be. What we did is we looked at 28 examination work papers. Twenty, I believe, from community banks, and 8 from credit unions. We did not find an instance where they were being held to standards that they were not required to be held to.

I am not implying that it doesn't happen. I am simply saying of those 28, we did not find evidence that they were being held to a different standard or something they were not required to be held to.

Chairman CHABOT. The gentleman's time has expired.

The gentleman from Pennsylvania, Mr. Evans, who is the ranking member of Subcommittee on Economic Growth Tax and Capital Access, recognized for 5 minutes.

Mr. EVANS. I am going to shock you, Mr. Chairman, and yield back the balance of my time.

Chairman CHABOT. Oh, the gentleman yields back. I am shocked, pleasantly shocked.

We appreciate the gentleman's testimony here today. I just wanted to make sure that the gentlelady didn't want to go to a second round. And we will follow up on this. We are waiting for the—you said it would be a couple months before we get the follow up on this? Okay.

So we appreciate your time. The committee will use today's conversation as we continue to examine all regulations impacting our Nation's smallest firms. And I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered. If there is no further business coming before the committee, we are adjourned. Thank you very much.

[Whereupon, at 3:13 p.m., the committee was adjourned.]

APPENDIX

United States Government Accountability Office

GAO

Testimony
Before the Committee on Small Business, House of Representatives

For Release on Delivery
Expected at 2:00 p.m, ET
Tuesday, February 27, 2018

ANALYZING REGULATORY BURDEN

Policies and Analyses under the Regulatory Flexibility Act and Retrospective Reviews Could Be Improved

Statement of Michael Clements, Director, Financial Markets and Community Investment

GAO Highlights

Highlights of GAO-18-404T, a report to Committee on Small Business, House of Representatives

Why GAO Did This Study

Federal financial regulators must comply with various rulemaking and review requirements, including those in RFA and EGRPRA. These statutes require analyses relating to regulatory burden, small entities, or both. RFA requires analyses of a rule's impact on small entities and alternatives that may minimize any significant economic impact. It also requires agencies to review rules (within 10 years) to determine if the rules should be amended or rescinded. EGRPRA directs specified regulators to review regulations at least every 10 years and identify areas that are outdated, unnecessary, or unduly burdensome on insured depository institutions.

This statement is based on findings from GAO's January 2018 report on RFA implementation (GAO-18-256) and February 2018 report on regulatory burden on community banks and credit unions (GAO-18-213). GAO discusses regulatory burdens and how financial regulators address regulatory burdens through the rulemaking process and retrospective reviews. For those reports, GAO's work included reviewing *Federal Register* notices; regulators' workpapers, policies and procedures; and reports to Congress on EGRPRA reviews. GAO also interviewed more than 60 community banks and credit unions.

What GAO Recommends

GAO made a total of 20 recommendations to the financial regulators in the two reports to improve their policies and procedures and analysis under RFA and in retrospective reviews. The regulators generally agreed with the recommendations.

View GAO-18-404T. For more information, contact Michael E. Clements at (202) 512-8678 or clementsm@gao.gov.

February 2018

ANALYZING REGULATORY BURDEN

Policies and Analyses under the Regulatory Flexibility Act and Retrospective Reviews Could Be Improved

What GAO Found

More than 60 smaller depository institutions told GAO that regulations for reporting mortgage characteristics; reviewing transactions for potentially illicit activity; and disclosing fees, conditions, and mortgage terms to consumers were the most burdensome. Institution representatives said these regulations were time-consuming and costly because the requirements were complex and required reporting that had to be reviewed for accuracy. Financial regulators and others noted these regulations provide various benefits as well, such as preventing lending discrimination or use of the banking system for illicit activity.

The Regulatory Flexibility Act (RFA) requires federal agencies to analyze the impact of their regulations on small entities. GAO found several weaknesses with the analyses of six financial regulators—Board of Governors of the Federal Reserve System (Federal Reserve), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission, Commodity Futures Trading Commission, and Consumer Financial Protection Bureau (CFPB)—that could undermine the goal of RFA and limit transparency and public accountability. For example, some analyses lacked important information, such as data sources, methodologies, and consideration of broad economic impacts. Evaluations of potential economic effects and alternative regulatory approaches also were limited. Finally, regulators generally lacked comprehensive policies and procedures for RFA implementation. By not developing such policies and procedures, regulators' ability to consistently and effectively meet RFA objectives may be limited.

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) and RFA require regulators to conduct retrospective reviews, and GAO found weaknesses.

- **EGRPRA.** GAO found limitations in activities regulators undertook for retrospective reviews under EGRPRA. CFPB, which has regulatory authority for a number of consumer financial laws, was not included in the most recent review process. Moreover, as part of their EGRPRA reviews, the Federal Reserve, OCC, FDIC, and the National Credit Union Administration had not conducted and reported analyses of quantitative data nor had these regulators assessed the cumulative effect of regulations. Addressing these limitations in the EGRPRA processes likely would make the analyses they perform more transparent, and potentially result in additional burden reduction.
- **RFA.** The issues GAO identified with RFA retrospective reviews (section 610 reviews) included some regulators using the EGRPRA process to fulfill RFA requirements and gaps or weaknesses in analysis and documentation. But EGRPRA requirements do not fully align with RFA's, and it is not clear if the EGRPRA process satisfies the requirements of section 610. Also, regulators generally have not developed policies and procedures for section 610 reviews. By meeting section 610 review requirements, regulators will be in a better position to minimize any significant economic impact of a rule on a substantial number of small entities, as the statute seeks to ensure.

Chairman Chabot, Ranking Member Velázquez, and Members of the Committee:

I am pleased to be here today to discuss our recent work on regulatory burden for small entities (such as community banks and credit unions) and efforts by financial regulators to reduce such burden when developing and retrospectively assessing regulations.[1] Federal financial regulators normally must comply with various rulemaking and review requirements, including those in the Regulatory Flexibility Act (RFA) and the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). These statutes require analyses relating to regulatory burden, small entities, or both:

- **Analyses during rulemaking.** RFA requires federal agencies, including financial regulators, to provide an assessment—known as a regulatory flexibility analysis—of a rule's potential impact on small entities and consider alternatives that may minimize any significant economic impact on small entities.[2] Alternatively, agencies may certify that a rule would not have a significant economic impact on a substantial number of small entities instead of performing a regulatory flexibility analysis.[3]
- **Retrospective reviews.** (1) EGRPRA directs three depository institution regulators—the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC)—to review regulations at least every 10 years and identify areas that are outdated, unnecessary, or unduly burdensome on

[1]GAO, *Financial Services Regulations: Procedures for Reviews under Regulatory Flexibility Act Need to Be Enhanced*, GAO-18-256 (Washington, D.C.: Jan. 30, 2018); and GAO, *Community Banks and Credit Unions: Regulators Could Take Additional Steps to Address Compliance Burdens*, GAO-18-213 (Washington, D.C.: Feb.13, 2018). Our January 2018 report focused on the Board of Governors of the Federal Reserve System (Federal Reserve), Consumer Financial Protection Bureau (CFPB), Commodity Futures Trading Commission, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission. Our February 2018 report focused on CFPB, Federal Reserve, FDIC, National Credit Union Administration, and OCC. Other financial regulators include the Farm Credit Administration and the Federal Housing Finance Agency.

[2]Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified as amended at 5 U.S.C. §§ 601-612).

[3]*See* 5 U.S.C. § 605(b). RFA generally applies only to rules for which an agency publishes a notice of proposed rulemaking. RFA does not mandate any particular outcome in rulemaking.

insured depository institutions. (2) RFA requires agencies to review within 10 years of publication those rules assessed as having a significant economic impact on a substantial number of small entities. Agencies are to determine if rules should be continued without change, amended, or rescinded to minimize such impacts.

My remarks today are based on our January 2018 report on RFA implementation and our February 2018 report that includes an analysis of the EGRPRA review process. My statement will focus on (1) regulations community banks and credit unions regarded as most burdensome and why; (2) the extent to which financial regulators performed analyses required by RFA and established policies and procedures for complying with RFA requirements; (3) efforts to reduce regulatory burden on community banks and credit unions during EGRPRA reviews; and (4) retrospective reviews required by RFA.

For the January 2018 report, our work included a review of the RFA section of the *Federal Register* notices and financial regulators' internal workpapers for all RFA certifications made in the final rule (66) and all rules for which agencies performed an initial regulatory flexibility analysis in the proposed rule and a final regulatory flexibility analysis in the final rule (39) in calendar years 2015 and 2016.[4] We also reviewed internal agency policies, procedures, and guidance for RFA analyses and certifications and documentation of retrospective reviews required by RFA (section 610 reviews) performed from calendar years 2006 through 2016. For the February 2018 report, our work included reviewing the EGRPRA report the Federal Reserve, FDIC, OCC, and the National Credit Union Administration (NCUA) issued in 2017.[5] To identify regulations that community banks and credit unions viewed as most burdensome, we obtained opinions from a non-probability selection of more than 60

[4]Certifications occur when the head of the agency certifies in the *Federal Register* that the rule would not have a significant economic impact on a substantial number of small entities. For any regulator that had fewer than three rules for which they performed an initial regulatory flexibility analysis in the proposed rule and a final regulatory flexibility analysis in the final rule, we selected all rules published in the prior year meeting these criteria until we reached three rules or a publication date of January 2013.

[5]NCUA is not required to participate in EGRPRA reviews (because EGRPRA did not include the agency in the list of agencies that must conduct the reviews), but has been participating voluntarily. NCUA's assessment of its regulations appears in separate sections of the reports to Congress for the 2007 and 2017 reviews.

community banks and credit unions.[6] We also reviewed comment letters received and transcripts of public meetings held as part of the review. We compared the requirements of Executive Orders 12866, 13563, and 13610 with actions regulators took implementing reviews. Detailed information on our scope and methodology can be found in our January and February 2018 reports.

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Regulatory Flexibility Act

RFA requires that federal agencies, including financial regulators, engaged in substantive rulemaking analyze the impact of proposed and final regulations on small entities. If a rule might have a significant economic impact on a substantial number of small entities, regulators are to consider any significant regulatory alternatives that will achieve statutory objectives while minimizing any significant economic impact on small entities. RFA defines "small entity" to include small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. RFA does not seek preferential treatment for small entities. Rather, it requires agencies to use an analytical process that includes identifying barriers to small business competitiveness and seeks a level playing field for small entities.

For each draft rule that requires a notice of proposed rulemaking, RFA requires regulators to prepare an initial regulatory flexibility analysis that contains an assessment of the rule's potential impact on small entities

[6]We selected a non-generalizable sample of 10 community banks and 7 credit unions to include institutions with certain asset levels, loan activity characteristics, and geographic locations. After the interviews demonstrated that considerable consensus existed among institutions about the most burdensome regulations, we conducted six focus groups with 46 banks and credit unions to confirm our selection of regulations perceived to be the most burdensome identified through interviews and to identify the characteristics of the regulations that made them burdensome.

and describes any significant alternatives to reduce the rule's significant economic impact on small entities while achieving statutory objectives. Following a public comment period, RFA requires regulators to conduct a similar analysis when they promulgate the final rule. If the head of the agency certifies in the *Federal Register* that the rule would not have a significant economic impact on a substantial number of small entities, agencies do not have to conduct the initial or final analysis.[7] Certifications must include a statement providing a factual basis for the certification.

Section 610 of RFA requires agencies to review, within 10 years of a final rule's publication, those rules assessed as having a significant economic impact on a substantial number of small entities to determine if they should be continued without change, amended, or rescinded (consistent with statutory objectives) to minimize any significant economic impact on small entities.[8]

RFA designates certain responsibilities to the Small Business Administration's Chief Counsel for Advocacy, including monitoring agency compliance with RFA and reviewing federal rules for their impact on small businesses.[9] Executive Order 13272 requires the Small Business Administration's Office of Advocacy (Office of Advocacy) to provide notifications and training about RFA requirements.[10] The Office of Advocacy published guidance on RFA compliance in 2003 (updated in 2012 and August 2017).[11] For example, the guidance details components regulators should include in their certifications to obtain meaningful public comments, such as a description and estimate of the economic impact.

[7]*See* 5 U.S.C. § 605(b).

[8]5 U.S.C. § 610(a).

[9]*See* 5 U.S.C. § 612.

[10]Exec. Order No. 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 Fed. Reg. 53461 (Aug. 16, 2002).

[11]Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (Washington, D.C.: May 2012). We generally used the 2012 guidance as criteria because the regulators' rules we reviewed were issued before 2017.

Economic Growth and Regulatory Paperwork Reduction Act of 1996

Under EGRPRA, the Federal Reserve, FDIC, and OCC are to categorize their regulations by type and provide notice and solicit public comment on all regulations for which they have regulatory authority to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome. The act also includes requirements on how the regulators should conduct the reviews, including reporting results to Congress.

The first EGRPRA review was completed in 2007. The second began in 2014, and the report summarizing its results was submitted to Congress in March 2017.[12] While NCUA is not required to participate in the EGRPRA review, NCUA has been participating voluntarily. NCUA's assessment of its regulations appears in separate sections of the 2007 and 2017 reports to Congress.

Community Banks and Credit Unions Saw Regulations on Mortgage Reporting and Disclosures and Anti-Money Laundering as Most Burdensome

Community bank and credit union representatives we interviewed identified three areas of regulations as most burdensome to their institutions:

1. Data reporting requirements related to loan applicants and loan terms under the Home Mortgage Disclosure Act of 1975 (HMDA).
2. Transaction reporting and customer due diligence requirements as part of the Bank Secrecy Act and related anti-money laundering regulations (collectively, BSA/AML).
3. Disclosures of mortgage loan fees and terms to consumers under the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974 Integrated Disclosure (TRID) regulation.[13]

Institution representatives told us they found these regulations were time-consuming and costly to comply with because the requirements were

[12] *See* Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act, 82 Fed. Reg. 15900 (Mar. 30, 2017).

[13] The Dodd-Frank Wall Street Reform and Consumer Protection Act directed CFPB to issue new requirements to integrate mortgage loan disclosures that previously were separately required by the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA), and their implementing regulations, Regulation Z and X, respectively. *See* Pub. L. No. 111-203, § 1032(f), § 1098, § 1100A, 124 Stat. 1376, 2007, 2103, 2107 (2010) (codified at 12 U.S.C. § 5532(f), § 2603, 15 U.S.C. § 1604(b)). The resulting TILA-RESPA Integrated Disclosure is also known as TRID.

complex, required individual reports that had to be reviewed for accuracy, or mandated actions within specific timeframes. For example, among the 28 community banks and credit unions whose representatives commented on HMDA-required reporting in our focus groups, 61 percent noted having to conduct additional HMDA-related training. Representatives in most of our focus groups said that they had to purchase or upgrade software systems to comply with BSA/AML requirements, which can be expensive, and some representatives said they have to hire third parties to comply with BSA/AML regulations. Representatives in all of our focus groups and many of our interviews said that the TRID regulations have increased the time their staff spend on compliance, increased the cost of providing mortgage lending services, and delayed the completion of mortgages for customers.

However, federal regulators and consumer advocacy groups' representatives said that benefits from these regulations were significant, such as collecting HMDA data that has helped address discriminatory practices. Staff from Financial Crimes Enforcement Network (FinCEN), which has delegated authority from the Secretary of the Treasury to implement anti-money laundering regulations, told us that the transaction reporting required and due-diligence programs required in BSA/AML rules are critical to safeguarding the U.S. financial sector from illicit activity, including illegal narcotic trafficking proceeds and terrorist financing activities.

The Consumer Financial Protection Bureau (CFPB) has taken steps to reduce the burdens for community banks and credit unions associated with the HMDA and TRID regulations. Also, FinCEN has developed several efforts in reducing the reporting requirements from BSA/AML regulations to reduce regulatory burden, such as a continuous evaluation process to look for ways to reduce burden associated with BSA reporting requirements, soliciting feedback through an interagency working group about potential burden, and expanding the ability of institutions to seek a Currency Transaction Report filing exemption when possible.

To reduce institutions' misunderstanding of the TRID regulation, CFPB has published a Small Entity Compliance Guide and a Guide to the Loan Estimate and Closing Disclosure Forms. However, CFPB officials acknowledged that some community banks and credit unions may be misinterpreting the regulation's requirements. We found that CFPB had not directly assessed the effectiveness of the guidance it provided to community banks and credit unions. Until the guidance is assessed for effectiveness, CFPB may not be able to respond to the risk that small institutions have implemented TRID incorrectly. We recommended that CFPB should assess the effectiveness of TRID guidance to determine the extent to which TRID's requirements are accurately understood and take steps to address any issues as necessary. CFPB agreed with the recommendations and intends to solicit public input on how it can improve its regulatory guidance and implementation support.

Financial Regulators Consider Burden When Developing Regulations, but Their Reviews under RFA Need to Be Enhanced

One of the ways that financial regulators attempt to address the burden of regulations is during the rulemaking process. For example, staff from the Federal Reserve, FDIC, and OCC all noted that when promulgating rules, their staff seek input from institutions and others throughout the process to design requirements that achieve the goals of the regulation at the most reasonable cost and effort for regulated entities. Once a rule has been drafted, the regulators publish it in the *Federal Register* for public comment. The staff noted that regulators often make revisions in response to the comments received to try to reduce compliance burdens in the final regulation. Under RFA, financial regulators conduct analyses during the rulemaking process that are intended to minimize economic impact on small entities. However, we found several weaknesses with the RFA analyses, policies, and procedures of six financial regulators—Federal Reserve, OCC, FDIC, Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and CFPB—that could undermine the goal of RFA and limit transparency and public accountability.

Certifications Were Not Always Consistent with Office of Advocacy Guidance and Other Best Practices

In reviewing 66 certifications by the six regulators, we found that in most (43 of 66) the regulators provided a factual basis and concluded the rule would not apply to small entities or have any economic impact.[14] According to the regulators, these rules included activities in which small entities do not engage, pertained to the regulator's internal processes, did not create new regulatory requirements, or eliminated duplicative rules. Additionally, regulators concluded in 5 of 66 certifications that the rule would have a beneficial impact on small entities.

Other certifications lacked information that would help explain the determination. Specifically, in 18 of 66 certifications, the regulators found

[14]Five of six regulators had rules in which they concluded the rule would not apply to small entities or have any economic impact. We reviewed one certification by the Federal Reserve, which found that the rule would have some economic impact on small entities.

the rule would have some economic impact on small entities, but concluded the impact would not be significant for a substantial number of small entities.[15] But the factual basis provided for most of the 18 certifications (across all six regulators) lacked key components the Office of Advocacy and the Office of Management and Budget (OMB) recommended for understanding the analyses regulators used to support their conclusion.[16] Examples include the following:

- **Data sources or methodologies.** In 15 of 18 certifications regulators did not describe or did not fully describe their methodology or data sources for their conclusions.
- **Broader economic impacts.** The certifications generally did not address broader economic impacts such as cumulative effects, competitive disadvantage, or disproportionality of effects and focused most of the analysis on specific compliance costs.
- **Defining key criteria.** Regulators generally did not define the criteria they used for "substantial number" and "significant economic impact" in their certifications.
- **Limited information.** Three certifications included none of the Office of Advocacy's suggested components, such as the number of affected entities, the size of the economic impacts, or the justification for the certification.

While many of the regulators' certification determinations incorporated key components, the weaknesses and inconsistencies we found could

[15]Regulators may have determined that rules in this group would affect a few small entities, but they conducted additional analysis to determine the rules would not have a significant economic impact on a substantial number of small entities.

[16]*See* Office of Management and Budget, *Circular A-4: Regulatory Analysis* (Washington, D.C.: Sept. 17, 2003). OMB issued Circular A-4 to provide guidance on analysis required by Executive Order 12866 (now supplemented by Executive Order 13563). As independent regulatory agencies that are not required to follow the economic analysis requirements of Executive Order 12866, the financial regulators also are not required to follow OMB Circular A-4. We used Circular A-4 as an example of best practices for agencies to follow when conducting their regulatory analyses and therefore used it as criterion for the January 2018 report. Circular A-4 replaces OMB's "best practices" guidance issued in 1996 and 2000. *See* Exec. Order No. 13579, Regulation and Independent Regulatory Agencies, 76 Fed. Reg. 41587 (July 14, 2011); Exec. Order No. 13771, Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 9339 (Feb. 3, 2017); and Exec. Order No. 13777, Enforcing the Regulatory Reform Agenda, 82 Fed. Reg. 12,285 (Mar. 1, 2017).

undermine the act's goal. For example, incomplete disclosure of methodology and data sources could limit the public and affected entities' ability to offer informed comments in response to regulators' certification assessments in proposed rules.[17]

Many RFA-Required Analyses Had Weaknesses

Our review of recent rules in which the agency performed an initial and final regulatory flexibility analysis found that the evaluation of key components—potential economic effects and alternative regulatory approaches—was limited in many cases, although the extent varied by regulator. RFA requires initial and final analyses to include information to assist the regulator, regulated entities, and the public in evaluating the potential impact of rules on small entities. The most important components include the assessment of a rule's potential economic effects on small entities—such as compliance costs—and the identification and evaluation of alternative regulatory approaches that may minimize significant economic effects while achieving statutory objectives.

- The evaluations for some rules of economic impact on small entities did not describe or estimate compliance costs.[18] Analyses we reviewed also generally did not evaluate differences in estimated compliance costs for identified alternatives.
- Five of six regulators did not consistently disclose the data sources or methodologies used for estimating the number of subject small entities or compliance costs.[19]

By not fully assessing potential economic effects or alternatives, regulators may not be fully realizing the opportunity to minimize unnecessary burdens on small entities, which is the primary goal of RFA.

[17]The regulators' guidance for complying with RFA generally does not include policies and procedures for helping to ensure consistent and complete RFA analyses. We discuss the regulators' guidance later in this statement.

[18]RFA states that in complying with the initial and final regulatory flexibility analyses provisions, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable. 5 U.S.C. § 607. According to Office of Advocacy guidance, RFA requires agencies to develop a quantitative analysis of the effects of a rule and its alternatives using available data. The guidance notes that providing general descriptive statements of a rule's effects would be a last resort when completing a significant quantitative analysis is not practicable.

[19]Detailed information on our evaluation of each agency's regulatory flexibility analyses can be found in our January 2018 report, GAO-18-256.

Regulators Lacked Comprehensive Policies and Procedures for RFA Analyses

Five of six regulators have written guidelines that restate statutory requirements for certifications and preparing regulatory flexibility analyses and provide some additional guidance for staff. However, the regulators generally have not developed comprehensive policies and procedures to assist staff in complying with RFA, which may contribute to the weaknesses we identified in some certifications and regulatory flexibility analyses. Federal internal control standards state the importance for agency management to establish through policies and procedures the actions needed to achieve objectives.[20]

The extent to which regulators' guidance included policies and procedures varied. But the guidance generally did not include procedures for evaluating a rule's potential economic impact on small entities; identifying and assessing regulatory alternatives that could minimize economic impact on small entities; disclosing methodology and data sources; and creating and maintaining documentation that supports findings.

By developing policies and procedures that provide specific direction to rulemaking staff, the regulators could better ensure consistent and complete implementation of RFA requirements and more fully realize the RFA goal of appropriately considering and minimizing impacts on small entities during and after agency rulemakings.

In our January 2018 report, we recommended that each of the regulators develop and implement specific policies and procedures for consistently complying with RFA requirements and related guidance for conducting RFA analyses. Five agencies generally agreed with this recommendation and one did not provide written comments.

[20]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

EGRPRA Reviews Resulted in Some Reduction in Burden, but the Reviews Have Limitations

Regulators took some actions to reduce burden as part of EGRPRA reviews, but we also identified opportunities to improve analyses and reporting.

Results of 2017 EGRPRA Review Included Some Actions to Reduce Regulatory Burden

To conduct the most recent EGRPRA review, the Federal Reserve, FDIC, and OCC sought comments from banks and others and held public meetings to obtain views on the regulations they administer. In the report they issued in March 2017, the regulators identified six significant areas in which commenters raised concerns: (1) capital rules, (2) Call Reports, (3) appraisal requirements, (4) examination frequency, (5) Community Reinvestment Act, and (6) BSA/AML regulations.[21] In the report, these regulators described various actions that could address some of the concerns that commenters raised including:

- On September 27, 2017, the regulators proposed several revisions to capital requirements that would apply to banks with less than $250 billion in assets and less than $10 billion in total foreign exposure. For example, the revisions simplify capital treatment for certain commercial real estate loans and would change the treatment of mortgage servicing assets.
- The regulators developed a new Call Report form for banks with assets of less than $1 billion and domestic offices only. In June 2017 and November 2017, the regulators issued additional proposed revisions, effective June 2018, to the three Call Report forms that banks are required to complete.[22] For example, community banks would report certain assets (nonperforming loans not generating their stated interest rate) less frequently—semi-annually instead of quarterly.

[21]Consolidated Reports of Condition and Income are known as Call Reports. Banks file Call Reports with their regulators outlining their financial condition and performance on a quarterly basis.

[22]*See* Proposed Agency Information Collection Activities; Comment Request, 82 Fed. Reg. 29147 (June 27, 2017) and Proposed Agency Information Collection Activities; Comment Request, 82 Fed. Reg. 51908 (Nov. 8, 2017).

- The regulators proposed raising the threshold for commercial real estate loans requiring an appraisal from $250,000 to $400,000. They also recently issued guidance on how institutions could obtain waivers or otherwise expand the pool of persons eligible to prepare appraisals if suitable appraisers are unavailable.
- The three regulators also issued a final rule in 2016 making qualifying depository institutions with less than $1 billion in total assets eligible for an 18-month examination cycle rather than a 12-month cycle.[23]

Although NCUA is not required to participate in the EGRPRA process, the 2017 EGRPRA report also includes a section in which NCUA describes actions it has taken to address regulatory burdens on credit unions. In the report, NCUA identified five significant areas raised by commenters relating to credit union regulation, including: (1) field of membership and chartering; (2) member business lending; (3) federal credit union ownership of fixed assets; (4) expansion of national credit union share insurance coverage; and (5) expanded powers for credit unions.

In response, NCUA took various actions. For example, NCUA modified and updated its field of credit union membership by revising the definition of a local community, rural district, and underserved area, which provided greater flexibility to federal credit unions seeking to add a rural district to their field of membership. NCUA also lessened some restrictions on member lending to small business and raised some asset thresholds for what would be defined as a small credit union so that fewer requirements would apply to these credit unions.

CFPB Was Not Included in 2017 Review and Significant Mortgage Regulations Were Not Assessed

One of the limitations in the EGRPRA process is that the statute mandating the process does not include CFPB and thus the significant mortgage-related regulations and other regulations that it administers—regulations that banks and credit unions generally must follow—were not included in the most recent EGRPRA review. The depository institution regulators cannot address these mortgage regulation-related burdens because they no longer have rulemaking authority for certain consumer financial statutes.

[23] *See* Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks, 81 Fed. Reg. 10063 (Feb. 29, 2016) (interim final rule), and 81 Fed. Reg. 90949 (Dec. 16, 2016) (final rule).

However, CFPB does have its own processes to assess the burden of regulations it has implemented. For example, section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires CFPB to conduct a one-time assessment of each significant rule it adopts under federal consumer financial law within 5 years of the rule's effective date. But CFPB staff told us that they have not yet determined whether certain other regulations that apply to banks and credit unions, such as the revisions to requirements, will be designated as significant and thus subjected to the one-time assessments.

During 2017, CFPB launched an internal task force to coordinate and bolster its continuing efforts to identify and relieve regulatory burdens for small businesses, such as community banks, that potentially will address any regulation the agency has under its jurisdiction. However, CFPB has not provided public information on the extent to which it intends to review regulations applicable to community banks and credit unions or provided information on the timing and frequency of the reviews. In addition, it has not indicated the extent to which it will coordinate the reviews with depository institution regulators as part of EGRPRA reviews.

Until CFPB publicly provides additional information indicating its commitment to periodically review the burden of all its regulations, community banks, credit unions, and other depository institutions may face diminished opportunities for regulatory relief.

In our February 2018 report, we recommended that CFPB issue public information on its plans for reviewing regulations, including information on the scope of regulations, timing and frequency of reviews, and the extent to which the reviews will be coordinated with the other regulators as part of the EGRPRA reviews. CFPB agreed with the recommendation and committed to developing additional plans for reviews of key regulations and publicly releasing such information. In the interim, CFPB stated it intends to solicit public input on how it should approach reviewing regulations.

Regulators Have Not Conducted or Reported Quantitative Analyses

Another limitation in the EGRPRA process conducted by the Federal Reserve, FDIC, OCC, and NCUA was that these regulators did not conduct or report on quantitative analyses during the EGRPRA process to help them determine if changes to regulations would be warranted. Our analysis of the 2017 EGRPRA report indicated that in responses to comments in which the regulators did not take any action, the regulators generally provided only their arguments against taking actions and did not cite analysis or data to support their narrative.

EGRPRA does not require the regulators to collect and report on any quantitative data they collected or analyzed as part of assessing the potential burden of regulations. In contrast, executive branch agencies tasked under executive orders to conduct retrospective reviews of regulations generally must collect and analyze quantitative data as part of assessing the costs and benefits of changing existing regulations. Conducting quantitative analysis for retrospective reviews could serve as a best practice for the depository institution regulators.

By not performing and reporting quantitative analyses where appropriate in the EGRPRA review, the regulators may be missing opportunities to better assess regulatory impacts, (including identifying the need for any changes or identifying benefits) and making their analyses more transparent to stakeholders.

In our February 2018 report, we recommended that the four depository institution regulators develop plans for their regulatory analyses describing how they will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process. The regulators agreed with the recommendation. For example, the Federal Reserve plans to coordinate with FDIC and OCC to identify opportunities to conduct quantitative analyses where feasible during future EGRPRA reviews. NCUA also said it should improve its quantitative analysis.

Regulators Have Not Considered the Cumulative Effects of Regulations

An additional limitation in the EGRPRA process we identified was that the depository institution regulators had not assessed the ways in which the cumulative burden of the regulations they administer may have created overlapping or duplicative requirements. Under the current process, the regulators have responded to issues raised about individual regulations based on comments they have received, not on bodies of regulations.

However, congressional intent in tasking regulators with EGRPRA reviews was to ensure they considered the cumulative effect of financial regulations. A 1995 Senate Committee on Banking, Housing, and Urban Affairs report stated while no one regulation can be singled out as being the most burdensome, and most have meritorious goals, the aggregate burden of banking regulations ultimately affects a bank's operations, its profitability, and the cost of credit to customers.[24]

In our February 2018 report, we recommended to the Federal Reserve, FDIC, NCUA, and OCC that as part of their EGRPRA review they develop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation. The regulators generally agreed with the recommendation and said they would work together to identify ways and opportunities to decrease the regulatory burden created by bodies of regulation. In addition, FDIC stated it would continue to monitor the cumulative effects of regulation; for example, through a review of community and quarterly banking studies and community bank Call Report data.

Regulators' Approach to RFA-Required Retrospective Reviews Varied, Including the Extent to Which They Developed Policies

Financial regulators took varying approaches to performing retrospective reviews for RFA; additionally, some regulators had not yet developed policies and procedures for conducting and reporting reviews.

Federal Banking Regulators Relied on Other Retrospective Reviews to Meet RFA Section 610 Requirements

We assessed section 610 reviews and found that the Federal Reserve, FDIC, and OCC conducted retrospective reviews that did not fully align with RFA's requirements. Officials at each of the agencies stated that they satisfy the requirements to perform section 610 reviews through the EGRPRA review process.

But the requirements of the EGRPRA reviews differ from those of the RFA-required section 610 reviews. For example, the EGRPRA review process relies on public comments to identify rules that may be outdated, unnecessary, or unduly burdensome, while public comments are only one

[24]Committee on Banking, Housing, and Urban Affairs, Economic Growth and Regulatory Paperwork Reduction Act of 1995, S. Rep. No 104-185 (1995).

component of section 610 reviews. The Office of Advocacy stated that agencies may satisfy section 610 requirements through other retrospective reviews if these other reviews meet the criteria of section 610.[25] According to an official from the Office of Advocacy, the office has not yet made a determination on whether the EGRPRA review process satisfies those requirements.

Although the agencies stated that they fulfill RFA requirements through EGRPRA, without confirming this with the Office of Advocacy, it is possible that they are not meeting RFA section 610 requirements and therefore may not be achieving the small-entity burden reduction that the statute seeks to ensure.

In our January 2018 report, we recommended that the Federal Reserve, FDIC, and OCC coordinate with the Office of Advocacy to determine whether the EGRPRA review process satisfies the requirements of section 610 and, if not, what steps should be taken to align the process with section 610 requirements. The Federal Reserve and FDIC generally agreed with this recommendation, and OCC did not provide written comments.

SEC Reviews Were Late and Not Fully Consistent with RFA Requirements or Office of Advocacy Guidance

Our review of 46 SEC section 610 reviews found that they were conducted late and were not fully consistent with RFA requirements or the Office of Advocacy's guidance for such reviews. RFA requires rules to be reviewed within 10 years of their publication as final rules, but SEC conducted all but one of its reviews 12 years after the rules were published. The reviews generally lacked substantive analysis, and no rules were amended as a direct result of their section 610 review.[26] The reviews generally provided no evidence of empirical analysis and no data to support the conclusions of the reviews, as recommended by the Office of Advocacy and OMB. In most cases, the reviews lacked a description of whether, or to what extent, the rule was affecting small entities.

SEC does not have written policies or procedures for completing rule reviews pursuant to RFA section 610, potentially contributing to the

[25] *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.*

[26] Three reviews concluded the rule needed to be amended to reduce burden on small entities; however, each of the rules already had been amended as a result of other rulemaking analysis.

weaknesses we identified (timing and lack of data and analysis to support findings). Therefore, in our January 2018 report, we recommended that SEC develop and implement specific policies and procedures for performing section 610 reviews. SEC generally agreed with the recommendation.

SEC also does not publicly disclose the findings or conclusions of its section 610 reviews. Although RFA does not require that agencies publish the results of 610 reviews, the Office of Advocacy recommends that to enhance transparency, agencies should communicate with interested entities about the reviews. Executive orders also highlight public disclosure of retrospective reviews.[27] Lack of public disclosure limits the transparency of the reviews, hindering the public's ability to hold agencies accountable for the quality and conclusions of their reviews. In our January 2018 report, we recommended that SEC publicly disclose its section 610 reviews, or summaries, with the basis for any conclusions. SEC generally agreed with the recommendation.

CFTC and CFPB Plan to Develop Policies and Procedures for Future Retrospective Reviews

CFTC and CFPB plan to put procedures in place for section 610 reviews. According to CFTC officials, the agency has not conducted any section 610 reviews in at least the last 10 years. CFPB has not yet been required to conduct any section 610 reviews. Section 610 reviews are required within 10 years of a rule's publication as a final rule; to date, none of the rules issued by CFPB, which was created in 2010, have met this deadline.

In our January 2018 report, we recommended that CFTC and CFPB develop policies and procedures for section 610 reviews that would include documenting analyses and public reporting of results. CFTC and CFPB generally agreed with the recommendation.

[27]For example, Executive Order 13563 recommends that retrospective analyses, including supporting data, should be released online whenever possible. *See* Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011). Executive Order 13610 reiterated this recommendation, stating that public disclosure promotes an open exchange of information. *See* Exec. Order No. 13610, Identifying and Reducing Regulatory Burdens, 77 Fed. Reg. 28469 (May 14, 2012).

Chairman Chabot, Ranking Member Velázquez, and members of the Committee, this concludes my statement. I would be pleased to respond to any questions you may have.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Michael E. Clements, Director, Financial Markets and Community Investment, at (202) 512-8678 or clementsm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Cody Goebel (Assistant Director), Stefanie Jonkman (Assistant Director), Katherine Carter (Analyst in Charge), Kevin Averyt, Bethany Benitez, Jeremy A. Conley, Pamela R. Davidson, Nancy Eibeck, Andrew Emmons, Courtney L. LaFountain, William V. Lamping, Marc Molino, Lauren Mosteller, Barbara Roesmann, and Jena Y. Sinkfield. Other assistance was provided by Farrah Graham and Tim Bober.

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Report to the Chairman, Committee on Small Business, House of Representatives

February 2018

COMMUNITY BANKS AND CREDIT UNIONS

Regulators Could Take Additional Steps to Address Compliance Burdens

This Report Is Temporarily Restricted Pending Official Public Release.

GAO-18-213

GAO Highlights

Highlights of GAO-18-213, a report to the Chairman, Committee on Small Business, House of Representatives

Why GAO Did This Study

In recent decades, many new regulations intended to strengthen financial soundness, improve consumer protections, and aid anti-money laundering efforts were implemented for financial institutions. Smaller community banks and credit unions must comply with some of the regulations, but compliance can be more challenging and costly for these institutions. GAO examined (1) the regulations community banks and credit unions viewed as most burdensome and why, and (2) efforts by depository institution regulators to reduce any regulatory burden. GAO analyzed regulations and interviewed more than 60 community banks and credit unions (selected based on asset size and financial activities), regulators, and industry associations and consumer groups. GAO also analyzed letters and transcripts commenting on regulatory burden that regulators prepared responding to the comments.

What GAO Recommends

GAO makes a total of 10 recommendations to CFPB and the depository institution regulators. CFPB should assess the effectiveness of guidance on mortgage disclosure regulations and publicly issue its plans for the scope and timing of its regulation reviews and coordinate these with the other regulators' review process. As part of their burden reviews, the depository institution regulators should develop plans to report quantitative rationales for their actions and addressing the cumulative burden of regulations. In written comments, CFPB and the four depository institution regulators generally agreed with the recommendations.

View GAO-18-213. For more information, contact Lawrance L. Evans, Jr. at (202) 512-8678 or evansl@gao.gov.

February 2018

COMMUNITY BANKS AND CREDIT UNIONS

Regulators Could Take Additional Steps to Address Compliance Burdens

What GAO Found

Interviews and focus groups GAO conducted with representatives of over 60 community banks and credit unions indicated regulations for reporting mortgage characteristics, reviewing transactions for potentially illicit activity, and disclosing mortgage terms and costs to consumers were the most burdensome. Institution representatives said these regulations were time-consuming and costly to comply with, in part because the requirements were complex, required individual reports that had to be reviewed for accuracy, or mandated actions within specific timeframes. However, regulators and others noted that the regulations were essential to preventing lending discrimination and use of the banking system for illicit activity, and they were acting to reduce compliance burdens. Institution representatives also said that the new mortgage disclosure regulations increased compliance costs, added significant time to loan closings, and resulted in institutions absorbing costs when others, such as appraisers and inspectors, changed disclosed fees. The Consumer Financial Protection Bureau (CFPB) issued guidance and conducted other outreach to educate institutions after issuing these regulations in 2013. But GAO found that some compliance burdens arose from misunderstanding the disclosure regulations—which in turn may have led institutions to take actions not actually required. Assessing the effectiveness of the guidance for the disclosure regulations could help mitigate the misunderstandings and thus also reduce compliance burdens.

Regulators of community banks and credit unions—the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration—conduct decennial reviews to obtain industry comments on regulatory burden. But the reviews, conducted under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), had the following limitations:

- CFPB and the consumer financial regulations for which it is responsible were not included.
- Unlike executive branch agencies, the depository institution regulators are not required to analyze and report quantitative-based rationales for their responses to comments.
- Regulators do not assess the cumulative burden of the regulations they administer.

CFPB has formed an internal group that will be tasked with reviewing regulations it administers, but the agency has not publicly announced the scope of regulations included, the timing and frequency of the reviews, and the extent to which they will be coordinated with the other federal banking and credit union regulators as part of their periodic EGRPRA reviews. Congressional intent in mandating that these regulators review their regulations was that the cumulative effect of all federal financial regulations be considered. In addition, sound practices required of other federal agencies require them to analyze and report their assessments when reviewing regulations. Documenting in plans how the depository institution regulators would address these EGRPRA limitations would better ensure that all regulations relevant to community banks and credit unions were reviewed, likely improve the analyses the regulators perform, and potentially result in additional burden reduction.

Contents

Figure

Abbreviations

AML	anti-money laundering
BSA	Bank Secrecy Act
Call Reports	Consolidated Report of Condition and Income
CFPB	Consumer Financial Protection Bureau
CTR	Currency Transaction Reports
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
EGRPRA	Economic Growth and Regulatory Paperwork Reduction Act of 1996
FDIC	Federal Deposit Insurance Corporation
Federal Reserve	Board of Governors of the Federal Reserve System
FFIEC	Federal Financial Institutions Examination Council
FinCEN	Financial Crimes Enforcement Network
HMDA	Home Mortgage Disclosure Act of 1975
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
RESPA	Real Estate Settlement Procedures Act
RFA	Regulatory Flexibility Act
SAR	Suspicious Activity Reports
TILA	Truth-in-Lending Act
TRID	TILA-RESPA Integrated Disclosure
USA PATRIOT ACT	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

February 13, 2018

The Honorable Steve Chabot
Chairman
Committee on Small Business
House of Representatives

Dear Mr. Chairman:

Within the past two decades, financial regulators have implemented many new regulations in the aftermath of events such as the September 2001 terrorist attacks and the financial crisis in 2007–2009, These regulations were intended to address the risks and problematic practices that contributed or led to the events, and included provisions that ranged from strengthening financial institutions' anti-money laundering (AML) programs to prevent terrorism financing to creating additional protections for mortgage lending. For example, in 2010 Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which includes numerous reforms to strengthen oversight of financial institutions.[1] As a result of this act and other actions taken by financial regulators, additional regulatory requirements were placed on financial institutions, including community banks and credit unions. These institutions historically have played an important role in serving their local customers, including providing credit to small businesses.

We previously reported that representatives of community banks and credit unions expressed concerns about the burden that additional regulations create for them.[2] For example, some credit union, community bank, and industry association representatives told us in 2015 that several mortgage-related rules increased their overall compliance burden. In turn, some said this had begun to adversely affect some lending

[1]Pub. L. No. 111-203, 124 Stat. 1376 (2010). We identified 236 provisions of the act that require regulators to issue rules. See GAO, *Financial Regulatory Reform: Regulators Have Faced Challenges Finalizing Key Reforms and Unaddressed Areas Pose Potential Risks*, GAO-13-195 (Washington, D.C.: Jan. 23, 2013).

[2]GAO, *Community Banks and Credit Unions: Impact of the Dodd-Frank Act Depends Largely on Future Rule Makings*, GAO-12-881 (Washington, D.C: Sep. 13, 2012); *Bank Capital Reforms: Initial Effects of Basel III on Capital, Credit, and International Competitiveness*, GAO-15-67 (Washington, D.C: Nov. 20, 2014); and *Dodd-Frank Regulations: Impacts on Community Banks, Credit Unions and Systemically Important Institutions*, GAO-16-169 (Washington, D.C: Dec. 30, 2015).

activities, such as mortgage lending to customers not typically served by larger financial institutions, although the regulations provided exemptions or other provisions to reduce such impacts. But surveys conducted by regulators, industry associations, and academics on the impact of the Dodd-Frank Act on small banks suggested that credit availability had been reduced by moderate to minimal amounts among those responding to the various surveys, and regulatory data up to that point had not confirmed a negative impact on mortgage lending.

You asked us to examine the impact of regulation on community banks and credit unions. This report examines (1) what regulations institutions regarded as most burdensome and why, and (2) what actions the regulators of these institutions have taken to address any burdens associated with financial regulations. In addition to this report, we will provide a separate report that addresses the effect of regulatory burden on lending activities by community banks and credit unions, the rate of formation of new institutions, and potential impacts of regulations that we expect to issue to you in spring 2018.

To identify regulations that community banks and credit unions viewed as most burdensome, we obtained opinions from a non-probability selection of selected community banks and credit unions. We drew our sample from institutions whose characteristics (such as asset size and activities) were typical of traditional community banking activities. The asset thresholds we used for our sample were $1.2 billion for banks (which represented 90 percent of banks as of March 2016) and $860 million for credit unions (which represented 95 percent of credit unions as of March 2016). We excluded institutions that were primarily conducting activities that were not typical of community banking, including institutions functioning primarily as credit card banks or institutions with headquarters outside the United States. From this group, we used additional criteria to select institutions that were located in various regions of the country and whose lending asset levels indicated they would have experience with complying with relevant regulations. The sample also included institutions overseen by each of the depository institution regulators—the Board of Governors of the Federal Reserve (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA).

Using this sample, we obtained opinions from representatives 64 institutions during individual interviews, focus groups, and a site visit.

- More specifically, we interviewed 10 community banks and 7 credit unions.
- After the interviews demonstrated considerable consensus existed among institutions about the most burdensome regulations, we held six focus groups with an additional 46 banks and credit unions to identify the characteristics of the regulations that made them burdensome.
- We also reviewed 28 reports of examinations conducted by the regulators of banks and credit unions we selected for our interviews to identify the extent to which these examinations addressed regulations from which the banks were exempted.

To determine what actions regulators took to address regulatory burden, we reviewed the reports the depository institution regulators issued for the 2007 and 2017 Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) reviews. We analyzed over 200 comment letters that the regulators received from community banks, credit unions, their trade associations, and others; and reviewed transcripts of all six public forums regulators held as part the 2017 EGRPRA regulatory review they conducted. We analyzed the extent to which they addressed the issues raised in comments received for the reviews. We also interviewed the depository institution regulators and the Consumer Financial Protection Bureau (CFPB) about their actions to address burden when creating rules and thereafter. We discussed issues that banks and credit unions identified with specific regulations with the depository institution regulators, CFPB, and the Financial Crimes Enforcement Network (FinCEN), which has delegated authority from the Secretary of the Treasury to implement, administer, and enforce compliance with anti-money laundering and terrorist financing regulations. We also interviewed associations representing consumers with knowledge of relevant activities to understand the benefits of these regulations and the Small Business Administration's Office of Advocacy, which reviews and comments on burdens of regulations, including those issued by banking regulators.

For more information on our scope and methodology, see appendix I. We conducted this performance audit from March 2016 to February 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

While no commonly accepted definition of a community bank exists, they are generally smaller banks that provide banking services to the local community and have management and board members who reside in the local community. In some of our past reports, we often defined community banks as those with under $10 billion in total assets.[3] However, many banks have assets well below $10 billion as data from the financial condition reports that institutions submit to regulators (Call Reports) indicated that of the more than 6,100 banks in the United States, about 90 percent had assets below about $1.2 billion as of March 2016.

Based on our prior interviews and reviews of documents, regulators and others have observed that small banks tend to differ from larger banks in their relationships with customers.[4] Large banks are more likely to engage in transactional banking, which focuses on the provision of highly standardized products that require little human input to manage and are underwritten using statistical information. Small banks are more likely to engage in what is known as relationship banking in which banks consider not only data models but also information acquired by working with the banking customer over time. Using this banking model, small banks may be able to extend credit to customers such as small business owners who might not receive a loan from a larger bank.

Small business lending appears to be an important activity for community banks. As of June 2017, community banks had almost $300 billion outstanding in loans with an original principal balance of under $1 million (which banking regulators define as small business lending), or about 20 percent of these institutions' total lending. In that same month, non-community banks had about $390 billion outstanding in business loans under $1 million representing 5 percent of their total lending.

Credit unions are nonprofit member-owned institutions that take deposits and make loans. Unlike banks, credit unions are subject to limits on their membership because members must have a "common bond"—for example, working for the same employer or living in the same community. Financial reports submitted to NCUA (the regulator that oversees federally-insured credit unions) indicated that of the more than 6,000

[3]See GAO-12-881, GAO-15-67, and GAO-16-169.

[4]GAO, *Financial Institutions: Causes and Consequences of Recent Bank Failures*, GAO-13-71 (Washington, D.C.: Jan. 3, 2013).

credit unions in the United States, 90 percent had assets below about $393 million as of March 2016.

In addition to providing consumer products to their members, credit unions are also allowed to make loans for business activities subject to certain restrictions. These member business loans are defined as a loan, line of credit, or letter of credit that a credit union extends to a borrower for a commercial, industrial, agricultural, or professional purpose, subject to certain exclusions.[5] In accordance with rules effective January 2017, the total amount of business lending credit unions can do is not to generally exceed 1.75 times the actual net worth of the credit union.[6]

Overview of Federal Financial Regulators for Community Banks and Credit Unions

Federal banking and credit union regulators have responsibility for ensuring the safety and soundness of the institutions they oversee, protecting federal deposit insurance funds, promoting stability in financial markets, and enforcing compliance with applicable consumer protection laws. All depository institutions that have federal deposit insurance have a federal prudential regulator. The regulator responsible for overseeing a community bank or credit union varies depending on how the institution is chartered, whether it is federally insured, and whether it is a Federal Reserve member (see table 1).

Table 1: Federal Depository Institution Regulators and Their Functions

Agency	Basic function
Office of the Comptroller of the Currency (OCC)	Charters and supervises national banks, federal savings associations and federally chartered branches and agencies of foreign banks
Board of Governors of the Federal Reserve System (Federal Reserve)	Supervises state-chartered banks that opt to be members of the Federal Reserve System, bank holding companies, savings and loan holding companies and the nondepository institution subsidiaries of those organizations, and nonbank financial companies designated for Federal Reserve supervision by the Financial Stability Oversight Council

[5] *See* 12 U.S.C. § 1757a(c)(1)(A).

[6] *See* 12 U.S.C. § 1757a(a). The statutory cap on outstanding member business loans does not apply in the case of an insured credit union that is chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, that serves predominantly low-income members, or is a community development financial institution as defined by the Community Development Banking and Financial Institutions Act of 1994. 12 U.S.C. § 1757a(b). The net worth ratio is the total of a credit union's regular reserves, any secondary capital, its undivided earnings, and its net income or loss divided by its total assets. See 12 C.F.R. § 702.2(g).

Agency	Basic function
Federal Deposit Insurance Corporation (FDIC)	Insures the deposits of all banks and thrifts approved for federal deposit insurance; supervises insured state-chartered banks that are not members of the Federal Reserve System, as well as insured state savings associations and insured state-chartered branches of foreign banks; resolves all failed insured banks and thrifts; and may be appointed to resolve large bank holding companies and nonbank financial companies supervised by the Federal Reserve. Also, has backup supervisory responsibility for all federally insured depository institutions
National Credit Union Administration (NCUA)	Charters and supervises federally chartered credit unions and insures deposits in federally chartered and the majority of state-chartered credit unions

Source: GAO. | GAO-18-213

Other federal agencies also impose regulatory requirements on banks and credit unions. These include rules issued by CFPB, which has supervision and enforcement authority for various federal consumer protection laws for depository institutions with more than $10 billion in assets and their affiliates. The Federal Reserve, OCC, FDIC, and NCUA continue to supervise for consumer protection compliance at institutions that have $10 billion or less in assets. Although community banks and credit unions with less than $10 billion in assets typically would not be subject to CFPB examinations, they generally are required to comply with CFPB rules related to consumer protection.

In addition, FinCEN also issues requirements that financial institutions, including banks and credit unions, must follow. FinCEN is a component of Treasury's Office of Terrorism and Financial Intelligence that supports government agencies by collecting, analyzing, and disseminating financial intelligence information to combat money laundering. It is responsible for administering the Bank Secrecy Act, which, with its implementing regulations, generally requires banks, credit unions, and other financial institutions, to collect and retain various records of customer transactions, verify customers' identities in certain situations, maintain AML programs, and report suspicious and large cash transactions.[7] FinCEN relies on financial regulators and others to examine U.S. financial institutions to determine compliance with these requirements.[8] In addition, financial institutions also have to comply with requirements by Treasury's Office of

[7]Pub. L. No. 91-508, tits. I and II, 84 Stat. 1114 (1970) (codified as amended at 12 U.S.C. §§ 1829b, 1951-1959; 18 U.S.C. §§ 1956-1957 and 1960; and 31 U.S.C. §§ 5311-5314 and 5316-5332). The Bank Secrecy Act is the commonly used term for the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that act. 31 C.F.R. § 1010.100(e).

[8]See GAO, *Anti-Money Laundering: U.S. Efforts to Combat Narcotics-Related Money Laundering in the Western Hemisphere* GAO-17-684 (Washington, D.C.: Aug. 22, 2017).

Foreign Asset Control to review transactions to ensure that business is not being done with sanctioned countries or individuals.

Recent Regulatory Changes

In response to the 2007-2009 financial crisis, Congress passed the Dodd-Frank Act, which became law on July 21, 2010. The act includes numerous reforms to strengthen oversight of financial services firms, including consolidating consumer protection responsibilities within CFPB. Under the Dodd-Frank Act, federal financial regulatory agencies were directed to or granted authority to issue hundreds of regulations to implement the act's reforms. Many of the provisions in the Dodd-Frank Act target the largest and most complex financial institutions, and regulators have noted that much of the act is not meant to apply to community banks.

Although the Dodd-Frank Act exempts small institutions, such as community banks and credit unions, from several of its provisions, and authorizes federal regulators to provide small institutions with relief from certain regulations, it also contains provisions that impose additional restrictions and compliance costs on these institutions. As we reported in 2012, federal regulators, state regulatory associations, and industry associations collectively identified provisions within 7 of the act's 16 titles that they expected to affect community banks and credit unions.[9] The provisions they identified as likely to affect these institutions included some of the act's mortgage reforms, such as those requiring institutions to

- ensure that a consumer obtaining a residential mortgage loan has the reasonable ability to repay the loan at the time the loan is consummated;
- comply with a new CFPB rule that combines two different mortgage loan disclosures that had been required by the Truth-in-Lending Act and the Real Estate Settlement Procedures Act of 1974; and
- ensure that property appraisers are sufficiently independent.

In addition to the regulations that have arisen from provisions in the Dodd-Frank Act, we reported that other regulations have created potential burdens for community banks. For example, the depository institution regulators also issued changes to the capital requirements applicable to

[9]GAO-12-881.

these institutions.[10] Many of these changes were consistent with the Basel III framework, which is a comprehensive set of reforms to strengthen global capital and liquidity standards issued by an international body consisting of representatives of many nations' central banks and regulators. These new requirements significantly changed the risk-based capital standards for banks and bank holding companies. As we reported in November 2014, officials interviewed from community banks did not anticipate any difficulties in meeting the U.S. Basel III capital requirements but expected to incur additional compliance costs.[11]

In addition to regulatory changes that could increase burden or costs on community banks, some of the Dodd-Frank Act provisions have likely resulted in reduced costs for these institutions. For example, revisions to the way that deposit insurance premiums are calculated reduced the amount paid by banks with less than $10 billion in assets by $342 million or 33 percent from the first to second quarter of 2011 after the change became effective. Another change reduced the audit-related costs that some banks were incurring in complying with provisions of the Sarbanes-Oxley Act.

Prior Studies on Regulatory Burden Generally Focused on Costs

A literature search indicated that prior studies by other entities, including regulators, trade associations or others, which examined how to measure regulatory burden generally focused on direct costs resulting from compliance with regulations, and our analysis of them identified various limitations that restrict their usefulness in assessing regulatory burden. For example, researchers commissioned by the Credit Union National Association, which advocates for credit unions, found costs attributable to regulations totaled a median of 0.54 percent of assets in 2014 for a non-random sample of the 53 small, medium, and large credit unions

[10] Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 78 Fed. Reg. 62018 (Oct. 11, 2013) (Federal Reserve and OCC) and 78 Fed. Reg. 55340 (Sept. 10, 2013) (FDIC Interim Final Rule). With minor changes, the September 2013 FDIC interim final rule became a final rule in April 2014. *See* 79 Fed. Reg. 20754 (Apr. 14, 2014). The Basel III framework has no legal force but was issued by the agreement of the Basel Committee members with the expectation that individual national authorities would implement the standards.

[11] GAO-15-67.

responding to a nationwide survey.[12] However, one of the study's limitations was its use of a small, non-random sample of credit unions. In addition, the research was not designed to conclusively link changes in regulatory costs for the sampled credit unions to any one regulation or set of regulations.

CFPB also conducted a study of regulatory costs associated with specific regulations applicable to checking accounts, traditional savings accounts, debit cards, and overdraft programs.[13] Through case studies involving 200 interviews with staff at seven commercial banks with assets over $1 billion, the agency's staff determined that the banks' costs related to ongoing regulatory compliance were concentrated in operations, information technology, human resources, and compliance and retail functions, with operations and information technology contributing the highest costs. While providing detailed information about the case study institutions, reliance on a small sample of mostly large commercial banks limits the conclusions that can be drawn about banks' regulatory costs generally. In addition, the study notes several challenges to quantifying compliance costs that made their cost estimates subject to some measurement error, and the study's design limits the extent to which a causal relationship between financial regulations and costs could be fully established. Researchers from the Mercatus Center at George Mason University used a nongeneralizable survey of banks to find that respondents believed they were spending more money and staff time on compliance than before due to Dodd-Frank regulations.[14] From a universe

[12]See Vincent Hui, Ryan Myers, and Kaleb Seymour, Credit Union National Association, *Regulatory Burden Financial Impact Study*, report prepared for the Credit Union National Association (February 2016).

[13]See Consumer Financial Protection Bureau, Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations (Washington, D.C.: November 2013). The regulations were: Regulations DD (Truth-in-Savings Act), E (Electronic Fund Transfer Act), P (Gramm-Leach-Bliley Act), and V (Fair Credit Reporting Act).

[14]Hester Peirce, Ian Robinson, and Thomas Stratmann, *How Are Small Banks Faring Under Dodd-Frank?* (Arlington, VA, February 2014).The Mercatus Center survey was based on convenience nonprobability sampling (sampling respondents who are easy to reach) and was conducted between July and September 2013, before the effective dates of some of the rules covered in the survey. The survey was distributed by national and state-level banking associations to their members and to 500 additional small banks. The survey had about 200 respondents with less than $10 billion in assets, although the number of respondents differed for each section of the survey. A majority of respondents fell in the asset-size range from $10 million to $1 billion. Because the survey relied on a nonprobability, convenience sample, it is not possible to use the results to draw inferences about the population of small banks.

of banks with less than $10 billion of assets, the center's researchers used a non-random sample to collect 200 responses to a survey sent to 500 banks with assets less than $10 billion about the burden of complying with regulations arising from the Dodd-Frank Act. The survey sought information on the respondents' characteristics, products, and services and the effects various regulatory and compliance activities had on operations and decisions, including those related to bank profitability, staffing, and products. About 83 percent of the respondents reported increased compliance costs of greater than or equal to 5 percent due to regulatory requirements stemming from the Dodd-Frank Act. The study's limitations include use of a non-random sample selection, small response rate, and use of questions that asked about the Dodd-Frank Act in general. In addition, the self-reported survey items used to capture regulatory burden—compliance costs and profitability—have an increased risk of measurement error and the causal relationship between Dodd-Frank Act requirements and changes in these indicators is not well-established.

Institutions Cited Mortgage and Anti-Money Laundering Regulations as Most Burdensome, although Others Noted Their Significant Public Benefits

Community bank and credit union representatives that we interviewed identified three sets of regulations as most burdensome to their institutions: (1) data reporting requirements related to loan applicants and loan terms under the Home Mortgage Disclosure Act of 1975 (HMDA); (2) transaction reporting and customer due diligence requirements as part of the Bank Secrecy Act and related anti-money laundering laws and regulations (collectively, BSA/AML); and (3) disclosures of mortgage loan fees and terms to consumers under the TILA-RESPA Integrated Disclosure (TRID) regulations.[15] In focus groups and interviews, many of the institution representatives said these regulations were time-consuming and costly to comply with, in part because the requirements were complex, required preparation of individual reports that had to be reviewed for accuracy, or mandated actions within specific timeframes. However, federal regulators and consumer advocacy groups said that benefits from these regulations were significant.

HMDA Requirements Deemed Time Consuming by Institutions but Critical to Others

Representatives of community banks and credit unions in all our focus groups and in most of our interviews told us that HMDA's data collection and reporting requirements were burdensome. Under HMDA and its implementing Regulation C, banks and credit unions with more than $45 million in assets that do not meet regulatory exemptions must collect, record, and report to the appropriate federal regulator, data about applicable mortgage lending activity.[16] For every covered mortgage application, origination, or purchase of a covered loan, lenders must collect information such as the loan's principal amount, the property location, the income relied on in making the credit decision, and the applicants' race, ethnicity, and sex. Institutions record this on a form called the loan/application register, compile these data each calendar

[15]To identify regulations deemed most burdensome, we interviewed institutions and reviewed comments made to regulators in letters or public forums. We selected a non-generalizable sample of10 community banks and 7 credit unions to include institutions with certain asset levels, loan activity characteristics, and geographic locations. After the interviews demonstrated that considerable consensus existed among institutions about the most burdensome regulations, we conducted six focus groups with 46 banks and credit unions to identify the characteristics of the regulations that made them burdensome. Where possible, we corroborated these findings by reviewing the comment letters regulators received from banks, credit unions, their trade associations and other parties as part of regulatory review efforts conducted under EGRPRA in 2014–2016.

[16]*See* 12 U.S.C. §§ 2801-2810 and 12 C.F.R. pt. 1003. Effective July 2011, the Dodd-Frank Act transferred HMDA rulemaking authority to CFPB. *See* 12 U.S.C. § 2804(a) and 12 U.S.C. § 5481(12)(K).

year, and submit them to CFPB.[17] Institutions have also been required to make these data available to the public upon request, after modifying them to protect the privacy of applicants and borrowers.[18]

Representatives of many community banks and credit unions with whom we spoke said that complying with HMDA regulations was time consuming. For example, representatives from one community bank we interviewed said it completed about 1,100 transactions that required HMDA reporting in 2016, and that its staff spent about 16 hours per week complying with Regulation C. In one focus group, participants discussed how HMDA compliance was time consuming because the regulations were complex, which made determining whether a loan was covered and should be reported difficult. As a part of that discussion, one bank representative told us that it was not always clear whether a residence that was used as collateral for a commercial loan was a reportable mortgage under HMDA. In addition, representatives in all of our focus groups in which HMDA was discussed and in some interviews said that they had to provide additional staff training for HMDA compliance. Among the 28 community banks and credit unions whose representatives commented on HMDA in our focus groups, 61 percent noted having to conduct additional HMDA-related training.

In most of our focus groups and three of our interviews, representatives of community banks and credit unions also expressed concerns about how federal bank examiners review HMDA data for errors. When regulatory examiners conducting compliance examinations determine that an institution's HMDA data has errors above prescribed thresholds, the institution has to correct and resubmit its data, further adding to the time required for compliance. While regulators have revised their procedures for assessing errors as discussed later, prior to 2018, if 10 percent or more of the loan/application registers that examiners reviewed had errors, an institution was required to review all of their data, correct any errors,

[17]Through December 2017, institutions were required to submit their HMDA data to the Federal Reserve, which administered the data for all Federal Financial Institution Examination Council (FFIEC) agencies. As of January 2018, institutions submit their HMDA data to CFPB.

[18]*See* 12 C.F.R. § 1003.5(c). CFPB will modify submitted HMDA data for public disclosure on the CFPB website for HMDA data reported on or after January 1, 2018. In response to a request for HMDA data from a member of the public, a covered institution will be required to provide a notice that its disclosure statement and modified data are available on the CFPB's website.

and resubmit them. If 5 percent or more of the reviewed loan/application registers had errors in a single data field, an institution had to review all other registers and correct the data in that field.[19] Participants in one focus group discussed how HMDA's requirements left them little room for error and that they were concerned that examiners weigh all HMDA fields equally when assessing errors. For example, representatives of one institution noted that for purposes of fair lending enforcement, errors in fields such as race and ethnicity can be more important than errors in the action taken date (the field for the date when a loan was originated or when an application not resulting in an origination was received). Representatives of one institution also noted that they no longer have access to data submission software that allowed them to verify the accuracy of some HMDA data, and this has led to more errors in their submissions. Representatives of another institution told us that they had to have staff conduct multiple checks of HMDA data to ensure the data met accuracy standards, which added to the time needed for compliance.

Representatives of many community banks and credit unions with whom we spoke also expressed concerns that compliance requirements for HMDA were increasing. The Dodd-Frank Act included provisions to expand the information institutions must collect and submit under HMDA, and CFPB issued rules implementing these new requirements that mostly became effective January 2018.[20] In addition to certain new data requirements specified in the act, such as age and the total points and fees payable at origination, CFPB's amendments to the HMDA reporting requirements also added additional data points, including some intended to collect more information about borrowers such as credit scores, as well as more information about the features of loans, such as fees and

[19]Subsequent to our focus groups, FFIEC member agencies issued revised data resubmission guidelines effective for the 2018 data collection year. Among other things, under the revised guidelines, testing will be divided into two stages, there will be tolerances for certain data fields, and the revised guidelines eliminate the file error resubmission threshold under which a financial institution would be directed to correct and resubmit its entire Loan Application Register (LAR) if the total number of sample files with one or more errors equaled or exceeded a certain threshold.

[20]*See* Pub. L. No. 111-203, § 1094, 124 Stat. 2097 (2010) (codified as amended at 12 U.S.C. § 2803(b)) and Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128 (Oct. 28, 2015).

terms.[21] In the final rule implementing the new requirements, CFPB also expanded the types of loans on which some institutions must report HMDA data to include open-ended lines of credit and reverse mortgages. Participants in two of our focus groups with credit unions said reporting this expanded information will require more staff time and training and cause them to purchase new or upgraded computer software.

In most of our focus groups, participants said that changes should be made to reduce the burdens associated with reporting HMDA data. For example, in some focus groups, participants suggested raising the threshold for institutions that have to file HMDA reports above the then current $44 million in assets, which would reduce the number of small banks and credit unions that are required to comply. Representatives of two institutions noted that because small institutions make very few loans compared to large ones, their contribution to the overall HMDA data was of limited value in contrast to the significant costs to the institutions to collect and report the data. Another participant said their institution sometimes make as few as three loans per month. In most of our focus groups, participants also suggested that regulators could collect mortgage data in other ways. For example, one participant discussed how it would be less burdensome for lenders if federal examiners collected data on loan characteristics during compliance examinations.

However, staff of federal regulators and consumer groups said that HMDA data are essential for enforcement of fair lending laws and regulations.[22] Representatives of CFPB, FDIC, NCUA, and OCC and groups that advocate for consumer protection issues said that HMDA data has helped address discriminatory practices. For example, some representatives noted a decrease in "redlining" (refusing to make loans to certain neighborhoods or communities). CFPB staff noted that HMDA data provides transparency about lending markets, and that HMDA data

[21]The new fields that will be required to be included in HMDA reports after January 2018 include applicant or borrower age, credit score, automated underwriting system information, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, nonamortizing loan features, interest rate, and loan originator identifier as well as other data. *See* Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128 (Oct. 28, 2015).

[22]Among other things, the act is intended to provide data that can help the public and policymakers determine whether financial institutions are serving the housing needs of their communities and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. *See* 12 U.S.C. § 2801(b) and 12 C.F.R. 1003.1(b)(1).

from community banks and credit unions is critical for this purpose, especially in some rural parts of the country where they make the majority of mortgage loans. While any individual institution's HMDA reporting might not make up a large portion of HMDA data for an area, CFPB staff told us that if all smaller institutions were exempted from HMDA requirements, regulators would have little or no data on the types of mortgages or on lending patterns in some areas.

Agency officials also told us that few good alternatives to HMDA data exist and that the current collection regime is the most effective available option for collecting the data. NCUA officials noted that collecting mortgage data directly from credit unions during examinations to enforce fair lending rules likely would be more burdensome for the institutions. CFPB staff and consumer advocates we spoke with also said that HMDA provides a low-cost data source for researchers and local policy makers, which leads to other benefits that cannot be directly measured but are included in HMDA's statutory goals—such as allowing local policymakers to target community investments to areas with housing needs.[23]

While representatives of some community banks and credit unions argued that HMDA data were no longer necessary because practices such as redlining have been reduced and they receive few requests for HMDA data from the public, representatives of some consumer advocate groups responded that eliminating the transparency that HMDA data creates could allow discriminatory practices to become more common. CFPB staff and representatives of one of these consumer groups also said that before the financial crisis of 2007–2009, some groups were not being denied credit outright but instead were given mortgages with terms, such as high interest rates, which made them more likely to default. The expanded HMDA data will allow regulators to detect such problematic lending practices for mortgage terms. CFPB and FDIC staff also told us that while lenders will have to collect and report more information, the new fields will add context to lending practices and should reduce the likelihood of incorrectly flagging institutions for potential discrimination. For example, with current data, a lender may appear to be denying mortgage applications to a particular racial or ethnic group, but with expanded data that includes applicant credit scores, regulators may

[23]One of HMDA's purposes is to assist public officials in distributing public-sector investment to attract private investment to areas in which it is needed. *See* 12 U.S.C. § 2801(b).

determine that the denials were appropriate based on credit score underwriting.

CFPB staff acknowledged that HMDA data collection and reporting may be time consuming, and said they have taken steps to reduce the associated burdens for community banks and credit unions.

- First, in its final rule implementing the Dodd-Frank Act's expanded HMDA data requirements, CFPB added exclusions for banks and credit unions that make very few mortgage loans. Effective January 2018, an institution will be subject to HMDA requirements only if it has originated at least 25 closed-end mortgage loans or at least 100 covered open-end lines of credit in each of the 2 preceding calendar years and also has met other applicable requirements. In response to concerns about the burden associated with the new requirement for reporting open-end lines of credit, in 2017, CFPB temporarily increased the threshold for collecting and reporting data for open-end lines of credit from 100 to 500 for the 2018 and 2019 calendar years.[24] CFPB estimated that roughly 25 percent of covered depository institutions will no longer be subject to HMDA as a result of these exclusions.
- Second, the Federal Financial Institutions Examination Council (FFIEC), which includes CFPB, announced the new *FFIEC HMDA Examiner Transaction Testing Guidelines* that specify when agency examiners should direct an institution to correct and resubmit its HMDA data due to errors found during supervisory examinations.[25] CFPB said these revisions should greatly reduce the burden associated with resubmissions. Under the revised standards, institutions will no longer be directed to resubmit all their HMDA data if they exceeded the threshold for HMDA files with errors, but will still be directed to correct specific data fields that have errors exceeding the

[24]Financial institutions originating fewer than 500 open-end lines of credit in either of the 2 preceding years will not be required to begin collecting such data until January 1, 2020. *See* Home Mortgage Disclosure (Regulation C), 82 Fed. Reg. 43088 (Sept. 13, 2017).

[25]Federal Financial Institutions Examination Council, *FFIEC HMDA Examiner Transaction Testing Guidelines* (Washington, D.C.: Aug. 22, 2017) for accessed October 6, 2017 at https://www.consumerfinance.gov/about-us/blog/heres-what-you-need-know-about-new-ffiec-hmda-examiner-transaction-testing-guidelines/.

specified threshold.[26] The revised guidelines also include new tolerances for some data fields, such as application date and loan amount.

- Third, CFPB also introduced a new online system for submitting HMDA data in November 2017. CFPB staff said that the new system, the HMDA Platform, will reduce errors by including features to allow institutions to validate the accuracy and correct the formatting of their data before submitting.[27] They also noted that this platform will reduce burdens associated with the previous system for submitting HMDA data. For example, institutions no longer will have to regularly download software, and multiple users within an institution will be able to access the platform. NCUA officials added that some credit unions had tested the system and reported that it reduced their reporting burden.
- Finally, on December 21, 2017, CFPB issued a public statement announcing that, for HMDA data collected in 2018, CFPB does not intend to require resubmission of HMDA data unless errors are material, and does not intend to assess penalties for errors in submitted data. CFPB also announced that it intends to open a rule making to reconsider various aspects of the 2015 HMDA rule, such as the thresholds for compliance and data points that are not required by statute.

[26]The thresholds for data resubmission in a single HMDA data field are based on the number of loans that an institution made in the previous year, and range from 2.5 percent for banks that made more than 100,000 loans to 10 percent for institutions that made 100 loans or fewer.

[27]This software is available at https://www.consumerfinance.gov/data-research/hmda/for-filers.

Institutions Found BSA/AML Regulations Burdensome and Regulators Have Been Considering Steps to Reduce Burden

In all our focus groups and many of our interviews, participants said they found BSA/AML requirements to be burdensome due to the staff time and other costs associated with their compliance efforts. [28] To provide regulators and law enforcement with information that can aid in pursuing criminal, tax, and regulatory investigations, BSA/AML statutes and regulations require covered financial institutions to

- file Currency Transaction Reports (CTR) for cash transactions conducted by a customer for aggregate amounts of more than $10,000 per day and Suspicious Activity Reports (SAR) for activity that might signal criminal activity (such as money laundering or tax evasion); and
- establish BSA/AML compliance programs that include efforts to identify and verify customers' identities and monitor transactions to report, for example, transactions that appear to violate federal law.[29]

Participants in all of our focus groups discussed how BSA/AML compliance was time-consuming, and in most focus groups participants said this took time away from serving customers. For example, representatives of one institution we interviewed told us that completing a single SAR could take 4 hours, and that they might complete 2 to 5 SARs per month. However, representatives of another institution said that at

[28]The Currency and Foreign Transactions Reporting Act, commonly known as the Bank Secrecy Act (BSA), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), establishes reporting, recordkeeping, and other anti-money laundering requirements for financial institutions, including a customer identification program and perfomance of customer due diligence or enhanced due diligence in certain situations, unless they are exempted by regulation. Pub. L. No. 91-508, tits. I and II, 84 Stat. 1114 (1970) (codified as amended at 12 U.S.C. §§ 1829b, 1951-1959; 18 U.S.C. §§ 1956-1957 and 1960; and 31 U.S.C. §§ 5311-5314 and 5316-5332); Pub. L. No. 107-506, § 352, 115 Stat. 272, 322 (codified at 31 U.S.C. § 5318(h)). Additionally, during BSA/AML examinations, regulators evaluate institutions' programs for identifying and reporting transactions that involve sanctioned countries and persons to ensure they comply with the economic sanctions administered and enforced by the Office of Foreign Assets Control.

[29]Financial institutions are required to have AML compliance programs that incorporate (1) compliance policies, procedures, and controls; (2) an independent audit review; (3) the designation of an individual to assure day-to-day compliance; and (4) ongoing training for appropriate personnel. *See* 31 U.S.C. § 5318(h)(1). Financial institutions also must satisfy the elements of the customer identification and customer due diligence programs—collectively, the Know Your Customer process—which includes having written risk-based procedures for verifying the identity of each customer, verifying the identify of "beneficial owners" of legal-entity customers, and conducting ongoing monitoring to maintain customer identification and identify suspicious transactions. *See* 31 C.F.R. § 1020.220(a)(2) and § 1010.230.

some times of the year it has filed more than 300 SARs per month. In a few cases, representatives of institutions saw BSA/AML compliance as burdensome because they had to take actions that seemed unnecessary based on the nature of the transactions. For example, one institution's representatives said that filing a CTR because a high school band deposited more than $10,000 after a fundraising activity seemed unnecessary, while another's said that it did not see the need to file SARs for charitable organizations that are well known in their community. Representatives of institutions in most of our focus groups also noted that BSA/AML regulations required additional staff training. Some of these representatives noted that the requirements are complex and the activities, such as identifying transactions potentially associated with terrorism, are outside of their frontline staff's core competencies.

Representatives in all focus groups and a majority of interviews said BSA imposes financial costs on community banks and credit unions that must be absorbed by those institutions or passed along to customers. In most of our focus groups, representatives said that they had to purchase or upgrade software systems to comply with BSA/AML requirements, which can be expensive. Some representatives also said they had to hire third parties to comply with BSA/AML regulations. Representatives of some institutions also noted that the compliance requirements do not produce any material benefits for their institutions.

In most of our focus groups, participants were particularly concerned that the compliance burden associated with BSA/AML regulations was increasing. In 2016, FinCEN—the bureau in the Department of the Treasury that administers BSA/AML rules—issued a final rule that expanded due-diligence requirements for customer identification. The final rule was intended to strengthen customer identification programs by requiring institutions to obtain information about the identities of the beneficial owners of businesses opening accounts at their institutions.[30] The institutions covered by the rule are expected to be in compliance by May 11, 2018. Some representatives of community banks and credit unions that we spoke with said that this new requirement will be

[30]Under the final rule, the beneficial owners of a legal entity include each individual, if any, who directly or indirectly owns 25 percent or more of the legal entity; and a single individual with significant responsibility to control, manage, or direct the legal entity, such as an executive officer or senior manager. Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016) (codified at 31 C.F.R. pts. 1010, 1020, 1023, 1024, and 1026).

burdensome. For example, one community bank's representatives said the new due-diligence requirements will require more staff time and training and cause them to purchase new or upgraded computer systems. Representatives of some institutions also noted that accessing beneficial ownership information about companies can be difficult, and that entities that issue business licenses or tax identification numbers could perform this task more easily than financial institutions.

In some of our focus groups, and in some comment letters that we reviewed that community banks and credit unions submitted to bank regulators and NCUA as part of the EGRPRA process, representatives of community banks and credit unions said regulators should take steps to reduce the burdens associated with BSA/AML. Participants in two of our focus groups and representatives of two institutions we interviewed said that the $10,000 CTR threshold, which was established in 1972, should be increased, noting it had not been adjusted for inflation. One participant told us that if this threshold had been adjusted for inflation over time, it likely would be filing about half of the number of CTRs that it currently files. In several focus groups, participants also indicated that transactions that must be checked against the Office of Foreign Assets Control list also should be subject to a threshold amount. Representatives of one institution noted that they have to complete time-consuming compliance work for even very small transactions (such as less than $1). Representatives of some institutions suggested that the BSA/AML requirements be streamlined to make it easier for community banks and credit unions to comply. For example, representatives of one institution that participated in the EGRPRA review suggested that institutions could provide regulators with data on all cash transactions in the format in which they keep these records rather than filing CTRs. Finally, participants in one focus group said that regulators should better communicate how the information that institutions submit contributes to law enforcement successes in preventing or prosecuting crimes.

Staff from FinCEN told us that the reports and due-diligence programs required in BSA/AML rules are critical to safeguarding the U.S. financial sector from illicit activity, including illegal narcotics and terrorist financing activities. They said they rely on CTRs and SARs that financial institutions file for the financial intelligence they disseminate to law enforcement agencies, and noted that they saw all BSA/AML requirements as essential because activities are designed to complement each other. Officials also pointed out that entities conducting terrorism, human trafficking, or fraud all rely heavily on cash, and reporting frequently made deposits makes tracking criminals easier. They said that significant reductions in BSA/AML reporting requirements would hinder law enforcement, especially because depositing cash through ATMs has become very easy.

FinCEN staff said they utilize a continuous evaluation process to look for ways to reduce burden associated with BSA/AML requirements, and noted actions taken as a result. They said that FinCEN has several means of soliciting feedback about potential burdens, including through its Bank Secrecy Act Advisory Group that consists of industry, regulatory, and law enforcement representatives who meet twice a year, and also through public reporting and comments received through FinCEN's regulatory process. FinCEN officials said that based on this advisory group's recommendations, the agency provided SAR filing relief by reducing the frequency of submission for written SAR summaries on ongoing activity from 90 days to 120 days. FinCEN also has recognized that financial institutions do not generally see the beneficial impacts of their BSA/AML efforts, and officials said they have begun several different feedback programs to address this issue.

FinCEN staff said they have been discussing ways to improve the CTR filing process, but in response to comments obtained as part of a recent review of regulatory burden they noted that the staff of law enforcement agencies do not support changing the $10,000 threshold for CTR reporting.[31] FinCEN officials said that they have taken some steps to reduce the burden related to CTR reporting, such as by expanding the ability of institutions to seek CTR filing exemptions, especially for low-risk customers. FinCEN is also utilizing its advisory group to examine aspects of the CTR reporting obligations to assess ways to reduce reporting burden, but officials said it is too early to know the outcomes of the effort. However, FinCEN officials said that while evaluation of certain reporting thresholds may be appropriate, any changes to them or other CTR requirements to reduce burden on financial institutions, must still meet the needs of regulators and law enforcement, and prevent misuse of the financial system.

FinCEN staff also said that some of the concerns raised about the upcoming requirements on beneficial ownership may be based on

[31]We discuss this regulatory review process (EGRPRA) in the next section of this report. FinCEN officials said that the law enforcement agencies they spoke with included the Federal Bureau of Investigation, the Internal Revenue Service, and the Drug Enforcement Agency.

misunderstandings of the rule. FinCEN officials told us that under the final rule, financial institutions can rely on the beneficial ownership information provided to them by the entity seeking to open the account. Under the final rule, the party opening an account on behalf of the legal entity customer is responsible for providing beneficial ownership information, and the financial institution may rely on the representations of the customer unless it has information that calls into question the accuracy of those representations. The financial institution does not have to confirm ownership; rather, it has to verify the identity of the beneficial owners as reported by the individual seeking to open the account, which can be done with photocopies of identifying documents such as a driver's license. FinCEN issued guidance explaining this aspect of the final rule in 2016.[32]

Institutions Found New Mortgage Term Disclosure Rules Burdensome, but Some May Be Misinterpreting Requirements

In all of our focus groups and many of our interviews, representatives of community banks and credit unions said that new requirements mandating consolidated disclosures to consumers for mortgage terms and fees have increased the time their staff spend on compliance, increased the cost of providing mortgage lending services, and delayed the completion of mortgages for customers. The Dodd Frank Act directed CFPB to issue new requirements to integrate mortgage loan disclosures that previously had been separately required by the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), and their implementing regulations, Regulation Z and X, respectively.[33] Effective in October 2015, the combined TILA-RESPA Integrated Disclosure (known as TRID) requires mortgage lenders to disclose certain mortgage terms, conditions, and fees to loan applicants during the origination process for certain mortgage loans and prescribe how the disclosures should be made.[34] The disclosure provisions also require

[32]Financial Crimes Enforcement Network, *Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions*, FIN-2016-G003 (Washington, D.C.: July 19, 2016), accessed September 28, 2017 at https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf.

[33]*See* Pub. L. No. 111-203, § 1032(f), 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. § 5532(f)); *see also* 15 U.S.C. § 1604.

[34]*See* Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth-in-Lending Act (Regulation Z), 78 Fed. Reg. 79730 (Dec. 31, 2013). TRID stands for TILA-RESPA Integrated Disclosure, which combined previously separate disclosures required under the Truth-in-Lending Act and the Real Estate Settlement Procedures Act.

lenders, in the absence of specified exceptions, to reimburse or refund to borrowers portions of certain fees that exceed the estimates previously provided in order to comply with the revised regulations.

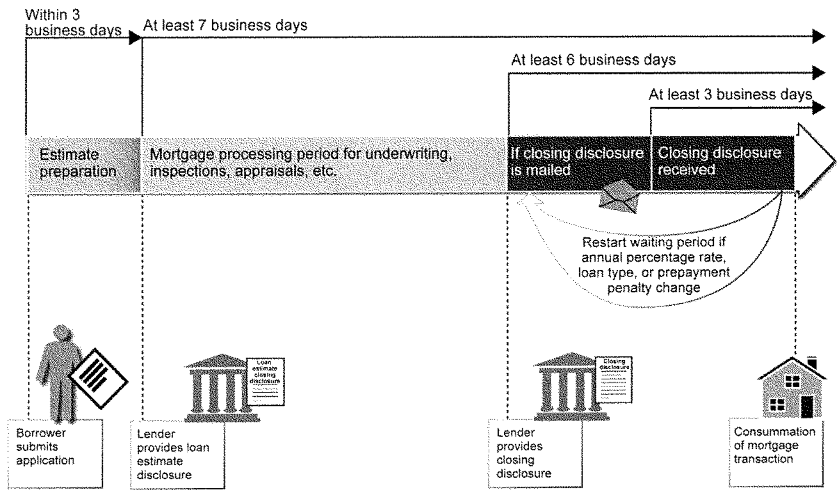
Under TRID, lenders generally must provide residential mortgage loan applicants with two forms, and deliver these documents within specified time frames (as shown in fig. 1).

- Within 3 business days of an application and at least 7 business days before a loan is consummated, lenders must provide the applicant with the loan estimate, which includes estimates for all financing costs and fees and other terms and conditions associated with the potential loan.[35] If circumstances change after the loan estimate has been provided (for example, if a borrower needs to change the loan amount), a new loan estimate may be required.
- At least 3 days before a loan is consummated, lenders must provide the applicant with the closing disclosure, which has the loan's actual terms, conditions, and associated fees. If the closing disclosure is mailed to an applicant, lenders must wait an additional 3 days for the applicant to receive it before they can execute the loan, unless they can demonstrate that the applicant has received the closing disclosure.
- If the annual percentage rate or the type of loan change after the closing disclosure is provided, or if a prepayment penalty is added, a new closing disclosure must be provided and a new 3-day waiting period is required. Other changes made to the closing disclosure require the provision of a revised closing disclosure, but a new 3-day waiting period is not required.

If the fees in the closing disclosure are more than the fees in the loan estimate (subject to some exceptions and tolerances discussed later in this section), the lender must reimburse the applicant for the amount of the increase in order to comply with the applicable regulations.

[35]Consummation occurs when the borrower becomes contractually obligated to the creditor on the loan. Consummation may commonly occur at the same time as closing or settlement, but it is a legally distinct event. The point in time when a borrower becomes contractually obligated to the creditor on the loan depends on applicable state law. CFPB instructs creditors and settlement agents to verify the applicable state laws to determine when consummation will occur and make sure delivery of the closing disclosure occurs at least 3 days before that event. For additional information, see *CFPB TILA-RESPA Integrated Disclosure Rule Small Entity Compliance Guide* (Washington, D.C.: March 2014).

Figure 1: Timeline of TILA-RESPA Integrated Disclosure Requirements



Source: GAO analysis of applicable statutes and regulations. | GAO-18-213

Note: TILA = Truth-in-Lending Act and RESPA = the Real Estate Settlement Procedures Act.

In all of our focus groups and most of our interviews, representatives of community banks and credit unions said that TRID has increased the time required to comply with mortgage disclosure requirements and increased the cost of mortgage lending. In half of our focus groups, participants discussed how they have had to spend additional time ensuring the accuracy of their initial estimates of mortgage costs, including fees charged by third parties, in part because they are now financially responsible for changes in fees during the closing process. Some participants also discussed how they have had to hire additional staff to meet TRID's requirements. In one focus group of community banks, participants described how mortgage loans frequently involve the use of multiple third parties, such as appraisers and inspectors, and obtaining accurate estimates of the amounts these parties will charge for their services within the 3-day period prescribed by TRID can be difficult. The community banks we spoke with also discussed how fees from these parties often change at closing, and ensuring an accurate estimate at the beginning of the process was not always possible. As a result, some representatives said that community banks and credit unions have had to pay to cure or correct the difference in changed third-party fees that are outside their control. In most of our focus groups and some of our interviews, representatives told us that this TRID requirement has made originating a mortgage more costly for community banks and credit unions.

Community banks and credit unions in half of our focus groups and some of our interviews also told us that TRID's requirements are complex and difficult to understand, which adds to their compliance burden. Participants in one focus group noted that CFPB's final rule implementing TRID was very long—the rule available on CFPB's website is more than 1,800 pages including the rule's preamble—and has many scenarios that require different actions by mortgage lenders or trigger different responsibilities as the following examples illustrate.

- Some fees in the loan estimate, such as prepaid interest, may be subsequently changed provided that the estimates were in good faith.
- Other fees, such as for third-party services where the charge is not paid to the lender or the lender's affiliate, may be changed by as much as 10 percent in aggregate before the lender becomes liable for the difference.
- However, for some charges the lender must reimburse or refund to the borrower portions of subsequent increases, such as fees paid to the creditor, mortgage broker, or a lender affiliate, without any percentage tolerance.

Based on a poll we conducted in all six focus groups, 40 of 43 participants said that they had to provide additional training to staff to ensure that TRID's requirements were understood, which takes additional time from serving customers.

In all of our focus groups and most of our interviews, community banks and credit unions also said that TRID's mandatory waiting periods and disclosure schedules increased the time required to close mortgage loans, which created burdens for the institutions and their customers. Several representatives we interviewed told us that TRID's waiting periods led to delays in closings of about 15 days. The regulation mandates that mortgage loans generally cannot be consummated sooner than 7 business days after the loan estimate is provided to an applicant, and no sooner than 3 business days after the closing disclosure is received by the applicant. If the closing disclosure is mailed, the lender must add another 3 business days to the closing period to allow for delivery. Representatives in some of our focus groups said that when changes needed to be made to a loan during the closing period, TRID requires them to restart the waiting periods, which can increase delays. For example, if the closing disclosure had been provided, and the loan product needed to be changed, a new closing disclosure would have to be provided and the applicant given at least 3 days to review it. Some representatives we interviewed said that their customers are frustrated by these delays and would like to close their mortgages sooner than TRID allows. Others said that TRID's waiting periods decreased flexibility in scheduling the closing date, which caused problems for homebuyers and sellers (for instance, because transactions frequently have to occur on the same day).

However, CFPB officials and staff of a consumer group said that TRID has streamlined previous disclosure requirements and is important for ensuring that consumers obtaining mortgages are protected. CFPB reported that for more than 30 years lenders have been required by law to provide mortgage disclosures to borrowers, and CFPB staff noted that prior time frames were similar to those required by TRID and Regulation Z. CFPB also noted that information on the disclosure forms that TRID replaced was sometimes overlapping, used inconsistent terminology, and could confuse consumers. In addition, CFPB staff and staff of a consumer group said that the previous disclosures allowed some mortgage-related fees to be combined, which prevented borrowers from knowing what charges for specific services were. They said that TRID disclosures better highlight important items for home buyers, allowing them to more readily compare loan options. Furthermore, CFPB staff told us that before TRID, lenders and other parties commonly increased a mortgage loan's fees during the closing process, and then gave borrowers a "take it or leave it" choice just before closing. As a result, borrowers often just accepted the increased costs. CFPB representatives said that TRID protects consumers from this practice by shifting the responsibility for most fee increases to lenders, and increases transparency in the lending process.

CFPB staff told us that it is too early to definitively identify what impact TRID has had on borrowers' understanding of mortgage terms, but told us that some information they have seen indicated that it has been helpful.[36] For example, CFPB staff said that preliminary results from the National Survey of Mortgage Originations conducted in 2017 found that consumer confidence in mortgage lending increased.[37] While CFPB staff said that this may indicate that TRID, which became effective in October 2015, has helped consumers better understand mortgage terms, they noted that the complete survey results are not expected to be released until 2018. CFPB staff said that these results should provide valuable information on how well consumers generally understood mortgage terms and whether borrowers were comparison shopping for loans that could be used to analyze TRID's effects on consumer understanding of mortgage products.

CFPB staff also told us that complying with TRID should not result in significant time being added to the mortgage closing process. Based on the final rule, they noted that TRID's waiting periods should not lead to delays of more than 3 days. CFPB staff also pointed out that the overall 7-day waiting period and the 3-day waiting period can be modified or waived if the consumer has a bona fide personal financial emergency, and thus should not be creating delays for those consumers. To waive the waiting period, consumers have to provide the lender with a written statement that describes the emergency. CFPB staff also said that closing times are affected by a variety of factors and can vary substantially, and that the delays that community banks and credit unions we spoke with reported may not be representative of the experiences of other lenders. A preliminary CFPB analysis of industry-published mortgage closing data found that closing times increased after it first implemented TRID, but that the delays subsequently declined. CFPB staff also said that they plan to analyze closing times using HMDA data now that they are collecting these data, and that they expect that delays that community banks and credit unions may have experienced so far would decrease as institutions adjusted to the new requirements.

Based on our review of TRID's requirements and discussions with community banks and credit unions, some of the burden related to TRID

[36]As part of the rulemaking process, CFPB conducted a cost-benefit analysis that indicated the rule would benefit consumers without imposing significant burdens on covered parties.

[37]The Federal Housing Finance Administration and CFPB conduct the survey every 2 years. CFPB officials said that the most recent survey for which complete data are available was conducted in 2015, and therefore did not reflect the impact of TRID implementation.

that community banks and credit unions described appeared to result from institutions taking actions not required by regulations, and community banks and credit unions told us they still were confused about TRID requirements. For example, representatives of some institutions we interviewed said that they believed TRID requires the entire closing disclosure process to be restarted any time any changes were made to a loan's amount. CFPB staff told us that this is not the case, and that revised loan estimates can be made in such cases without additional waiting periods. Representatives of several other community banks and credit unions cited 5- and 10-day waiting periods not in TRID requirements, or believed that the 7-day waiting period begins after the closing disclosure is received by the applicant, rather than when the loan estimate is provided. Participants in one focus group discussed that they were confused about when to provide disclosures and what needs to be provided. Representatives of one credit union said that if they did not understand a requirement, it was in their best interest to delay closing to ensure they were in compliance.

CFPB staff said that they have taken several steps to help lenders understand TRID requirements. CFPB has published a Small Entity Compliance Guide and a Guide to the Loan Estimate and Closing Disclosure Forms.[38] As of December 2017, these guides were accessible on a TRID implementation website that has links to other information about the rule, as well as blank forms and completed samples.[39] CFPB staff told us that the bureau conducted several well-attended, in-depth webinars to explain different aspects of TRID, including one with more than 20,000 participants, and that recordings of the presentations remained available on the bureau's TRID website. CFPB also encourages institutions to submit questions about TRID through the website, and the staff said that they review submitted questions for any patterns that may indicate that an aspect of the regulation is overly burdensome.

[38]Consumer Financial Protection Bureau, *TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide* (Washington, D.C.: October 2016), accessed on December 14, 2017, at https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/.

[39]See https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/.

However, the Mortgage Bankers Association reported that CFPB's guidance for TRID had not met the needs of mortgage lenders.[40] In a 2017 report on reforming CFPB, this association stated that timely and accessible answers to frequently asked questions about TRID were still needed, noting that while CFPB had assigned staff to answer questions, these answers were not widely circulated.[41] The association also reported that it had made repeated requests for additional guidance related to TRID, but the agency largely did not respond with additional materials in response to these requests.

Although we found that misunderstandings of TRID requirements could be creating unnecessary compliance burdens for some small institutions, CFPB had not assessed the effectiveness of the guidance it provided to community banks and credit unions. Under the Dodd-Frank Act, CFPB has a general responsibility to ensure its regulations are not unduly burdensome, and internal control standards direct federal agencies to analyze and respond to risks related to achieving their defined objectives. However, CFPB staff said that they have not directly assessed how well community banks and credit unions have understood TRID requirements and acknowledged that some of these institutions may be applying the regulations improperly. They said that CFPB intends to review the effectiveness of its guidance, but did not indicate when this review would be completed. Until the agency assesses how well community banks and credit unions understand TRID requirements, CFPB may not be able to effectively respond to the risk that some smaller institutions have implemented TRID incorrectly, unnecessarily burdening their staff and delaying consumers' home purchases.

[40] Mortgage Bankers Association, *CFPB 2.0: Advancing Consumer Protection* (Washington, D.C.: August 2017), accessed on December 14, 2017, at: https://www.mba.org/issues/residential-issues/cfpb-20-advancing-consumer-protection.

[41] CFPB made an audio recording of answers to frequently asked questions available on its website, but as of December 2017 had not published a document with these answers.

Community Banks and Credit Unions Appeared to Be Receiving Applicable Regulatory Exemptions, but Expressed Concerns about Examiner Expectations

We did not find that regulators directed institutions to comply with regulations from which they were exempt, although institutions were concerned about the appropriateness of examiner expectations. To provide regulatory relief to community banks and credit unions, Congress and regulators have sometimes exempted smaller institutions from the need to comply with all or part of some regulations. Such exemptions are often based on the size of the financial institution or the level of particular activities. For example, CFPB exempted institutions with less than $45 million in assets and fewer than 25 closed-end mortgage loans or 500 open-end lines of credit from the expanded HMDA reporting requirements. In January 2013, CFPB also included exemptions for some institutions in a rule related to originating loans that meet certain characteristics—known as qualified mortgages—in order for the institutions to receive certain liability protections if the loans later go into default. To qualify for this treatment, the lenders must make a good faith effort to determine a borrower's ability to repay a loan and the loan must not include certain risky features (such as interest-only or balloon payments). In its final rule, CFPB included exemptions that allow small creditors to originate loans with certain otherwise restricted features (such as balloon payments) and still be considered qualified mortgage loans.[42]

Concerns expressed to legislators about exemptions not being applied appeared to be based on misunderstandings of certain regulations. For example, in June 2016, a bank official testified that he thought his bank would be exempt from all of CFPB's requirements. However, CFPB's rules applicable to banks apply generally to all depository institutions, although CFPB only conducts compliance examinations for institutions with assets exceeding $10 billion. The depository institution regulators continue to examine institutions with assets below this amount (the overwhelming majority of banks and credit unions) for compliance with regulations enacted by CFPB.

Although not generalizable, our analysis of select examinations did not find that regulators directed institutions to comply with requirements from which they were exempt. In our interviews with representatives from 17

[42] A small creditor, under CFPB's current rules, is a creditor that 1) together with its affiliates, must not have extended more than 2,000 covered transactions secured by first liens (excluding loans held in portfolio) in the preceding calendar year (with certain exceptions); and (2) together, with its affiliates that regularly extended covered transactions, must have had less than $2 billion in in total assets (adjusted annually) as of the end of the preceding calendar years (with certain exceptions).

community banks and credit unions, none of the institutions' representatives identified any cases in which regulators required their institution to comply with a regulatory requirement from which they should have been exempt. We also randomly selected and reviewed examination reports and supporting material for 28 examinations conducted by the regulators to identify any instances in which the regulators had not applied exemptions.[43] From our review of the 28 examinations, we found no instances in the examination reports or the scoping memorandums indicating that examiners had required these institutions to comply with the regulations covered by the eight selected exemptions. Because of the limited number of the examinations we reviewed, we cannot generalize our findings to the regulatory treatment of all institutions qualifying for exemptions.

Although not identifying issues relating to exemptions, representatives of community banks and credit unions in about half of our interviews and focus groups expressed concerns that their regulators expected them to follow practices they did not feel corresponded to the size or risks posed by their institutions. For example, representatives from one institution we interviewed said that examiners directed them to increase BSA/AML activities or staff, whereas they did not see such expectations as appropriate for institutions of their size. Similarly, in public forums held by regulators as part of their EGRPRA reviews (discussed in the next

[43]For this analysis, we identified eight exemptions in regulations, resulting from the Dodd-Frank Act that apply to banks and credit unions with less than $1 billion in assets. Under the CFPB's current rules, these exemptions included (1) a special category of qualified mortgage, which applies to creditors that, together with their affiliates, did not originate more than 2,000 first-lien covered transactions (excluding loans held in portfolio) in the preceding calendar year; had, with their affiliates that regularly extended covered transactions, less than $2 billion in assets at the end of the proceeding calendar year; and, for an exemption allowing the origination of balloon payment qualified mortgages, originated a first-lien covered transaction on a property located in a rural or underserved area in the proceeding calendar year; (2) escrow account exemption—which applies to creditors that meet both the same small creditor, and small creditor operating in a rural or underserved area, requirements specified above for the qualified mortgage exemption; (3) TRID exemption—which applies to lenders that normally do not extend consumer credit; (4) appraisals for higher-priced mortgages exemption—which applies to creditors of mortgage transactions of $25,000 or less and creditors of certain manufactured home loans; (5) mortgage servicing exemption—which applies to servicers that service 5,000 and less mortgage loans; (6) international remittances exemption—which applies to companies that consistently provide 100 or fewer remittance transfers per year; (7) debit interchanges fee cap exemption—which applies to issuers, together with their affiliates, that have less than $10 billion in assets; and (8) regulatory capital rule stress test exemption—which applies to banks with less than $10 billion in total assets (they are not required or expected to conduct institution-wide stress testing).

section) a few bank representatives stated that regulators sometimes considered compliance activities by large banks to be best practices, and then expected smaller banks to follow such practices. However, institution representatives in the public forums and in our interviews and focus groups that said sometimes regulators' expectations for their institutions were not appropriate, but did not identify specific regulations or practices they had been asked to consider following when citing these concerns.

To help ensure that applicable exemptions and regulatory expectations are appropriately applied, federal depository institution regulators told us they train their staff in applicable requirements and conduct senior-level reviews of examinations to help ensure that examiners only apply appropriate requirements and expectations on banks and credit unions. Regulators said that they do not conduct examinations in a one-size-fits-all manner, and aim to ensure that community banks and credit unions are held to standards appropriate to their size and business model. To achieve this, they said that examiners undergo rigorous training. For example, FDIC staff said that its examiners have to complete four core trainings and then receive ongoing on-the-job instruction. Each of the four regulators also said they have established quality assurance programs to review and assess their examination programs periodically. For example, each Federal Reserve Bank reviews its programs for examination inconsistency and the Federal Reserve Board staff conducts continuous and point-in-time oversight reviews of Reserve Banks' examination programs to identify issues or problems, such as examination inconsistency.

The depository institution regulators also said that they have processes for depository institutions to appeal examination findings if they feel they were held to inappropriate standards. In addition to less formal steps, such as contacting a regional office, each of the four regulators have an ombudsman office to which institutions can submit complaints or concerns about examination findings. Staffs of the various offices are independent from the regulators' management and work with the depository institutions to resolve examination issues and concerns. If the ombudsman is unable to resolve the complaints, then the institutions can further appeal their complaints through established processes.

Reviews of Regulations Resulted in Some Reduction in Burden, but the Reviews Have Limitations

Federal depository institution regulators address regulatory burden of their regulated institutions through the rulemaking process and also through retrospective reviews that may provide some regulatory relief to community banks. However, the retrospective review process has some limitations that limit its effectiveness in assessing and addressing regulatory burden on community banks and credit unions.

Mechanisms for Regulators to Address Regulatory Burden Include Mandated Decennial Reviews

Federal depository institution regulators can address the regulatory burden of their regulated institutions throughout the rulemaking process and through mandated, retrospective or "look back" reviews. According to the regulators, attempts to reduce regulatory burden start during the initial rulemaking process. Staff from FDIC, Federal Reserve, NCUA, and OCC all noted that when promulgating rules, their staff seek input from institutions and others throughout the process to design requirements that achieve the goals of the regulation at the most reasonable cost and effort for regulated entities.[44] Once a rule has been drafted, the regulators publish it in the *Federal Register* for public comment. The staff noted that regulators often make revisions in response to the comments received to try to reduce compliance burdens in the final regulation.

After regulations are implemented, banking regulators also address regulatory burdens by periodically conducting mandated reviews of their regulations. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) directs three regulators (Federal Reserve, FDIC, and OCC, as agencies represented on the Federal Financial Institutions Examination Council) to review at least every 10 years all of their regulations and through public comment identify areas of the regulations that are outdated, unnecessary or unduly burdensome on insured depository institutions.[45] Under the act, the regulators are to categorize their regulations and provide notice and solicit public comment on all the regulations for which they have regulatory authority. The act also includes a number of requirements on how the regulators should conduct the

[44] As part of its rulemaking process CFPB is required to convene small business review panels for rulemaking efforts that are expected to have a significant economic impact on a substantial number of small entities (this requirement does not apply to the depository institution regulators). *See* 5 U.S.C. § 609. These panels are intended to seek direct input early in the rulemaking process from small entities.

[45] *See* 12 U.S.C. § 3311.

review, including reporting results to Congress. The first EGRPRA review was completed in 2007. The second EGRPRA review began in 2014 and the report summarizing its results was submitted to Congress in March 2017.

While NCUA is not required to participate in the EGRPRA review (because EGRPRA did not include the agency in the list of agencies that must conduct the reviews), NCUA has been participating voluntarily. NCUA's assessment of its regulations appears in separate sections of the reports provided to Congress for each of the 2007 and 2017 reviews.

Bank Regulators' 2017 EGRPRA Review Process and Results

Regulators began the most recent EGRPRA review by providing notice and soliciting comments in 2014–2016. The Federal Reserve, FDIC, and OCC issued four public notices in the *Federal Register* seeking comments from regulated institutions and interested parties on 12 categories of regulations they promulgated. The regulators published a list of all the regulations they administer in the notices and asked for comments, including comments on the extent to which regulations were burdensome.[46] Although not specifically required under EGRPRA, the regulators also held six public meetings across the country with several panels of banks and community groups. At each public meeting, at least three panels of bank officials represented banks with assets of generally less than $5 billion and a large number of the panels included banks with less than $2 billion in assets. Panels were dedicated to specific regulations or sets of regulations. For example, one panel covered capital-related rules, consumer protection, and director-related rules, and another addressed BSA/AML requirements. Although panels were dedicated to specific regulations or sets of regulations, the regulators invited comment on all of their regulations at all public meetings.

[46]The categories were (1) applications and reporting; (2) powers and activities; (3) international operations; (4) banking operations; (5) capital; (6) Community Reinvestment Act; (7) consumer protection; (8) directors, officers, and employees; (9) money laundering; (10) rules and procedures; (11) safety and soundness; and (12) securities. Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 79 Fed. Reg. 32172 (June 4, 2014); 80 Fed. Reg. 7980 (Feb. 13, 2015); 80 Fed. Reg. 32046 (June 5, 2015); and 80 Fed. Reg. 79724 (Dec. 23, 2015). The EGRPRA review process commences with the publication of the first *Federal Register* notice.

The regulators then assessed the public comments they received and described actions they intended to take in response. EGRPRA requires that the regulators identify the significant issues raised by the comments. The regulators generally deemed the issues that received the most public comments as significant. For the 2017 report, representatives at the Federal Reserve, FDIC, and OCC reviewed, evaluated, and summarized more than 200 comment letters and numerous oral comments they received.[47] For interagency regulations that received numerous comments, such as those relating to capital and BSA/AML requirements, the comment letters for each were provided to staff of one of the three regulators or to previously established interagency working groups to conduct the initial assessments.

The regulators' comment assessments also included reviews by each agency's subject-matter experts, who prepared draft summaries of the concerns and proposed agency responses for each of the rules that received comments. According to one bank regulator, the subject-matter experts assessed the comments across three aspects: (1) whether a suggested change to the regulation would reduce bank burdens; (2) how the change to the regulation would affect the safety and soundness of the banking system; and (3) whether a statutory change would be required to address the comment. The summaries drafted by the subject-matter experts then were shared with staff representing all three regulators and further revised. The staff of the three regulators said they then met jointly to analyze the merits of the comments and finalize the comment responses and the proposed actions for approval by senior management at all three regulators.

In the 2017 report summarizing their assessment of the comments received, the regulators identified six significant areas in which commenters raised concerns: (1) capital rules, (2) financial condition reporting (Call Reports), (3) appraisal requirements, (4) examination frequency, (5) Community Reinvestment Act, and (6) BSA/AML. Based on our analysis of the 2017 report, the Federal Reserve, FDIC, and OCC had taken or pledged to take actions to address 11 of the 28 specific concerns commenters had raised across these six areas. We focused our analysis on issues within the six significant issues that affected the

[47]Of the more than 150 regulations for which they sought comments, the regulators received comments on almost 50 interagency regulations.

smaller institution and defined an action taken by the regulators as a change or revision to a regulation or the issuance of guidance.

Capital rules. The regulators noted in the 2017 EGRPRA report that they received comment letters from more than 30 commenters on the recently revised capital requirements. Although some of the concerns commenters expressed related to issues affecting large institutions, some commenters sought to have regulators completely exempt smaller institutions from the requirements. Others objected to the amounts of capital that had to be held for loans made involving more volatile commercial real estate.

In response, the regulators stated that the more than 500 failures of banks in the recent crisis, most of which were community banks, justified requiring all banks to meet the new capital requirements. However, they pledged in the report to make some changes, and have recently proposed rules that would alter some of the requirements. For example, on September 27, 2017, the regulators proposed several revisions to the capital requirements that would apply to banks not subject to the advanced approach requirements under the capital rules (generally, banks with less than $250 billion in assets and less than $10 billion in total foreign exposure).[48] For example, the proposed rule simplifies the capital treatment for certain commercial acquisition, development, and construction loans, and would change the treatment of mortgage servicing assets.[49]

Call Reports. The regulators also received more than 30 comments relating to the reports—known as Call Reports—that banks file with the regulators outlining their financial condition and performance. Generally, the commenters requested relief (reducing the number of items required to be reported) for smaller banks and also asked that the frequency of reporting for some items be reduced.

[48]*See* Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 82 Fed. Reg. 49984 (Oct. 27, 2017). Generally, advanced approaches banks are those with consolidated total assets of $250 billion or more or with consolidated total on-balance sheet foreign exposure of $10 billion or more.

[49]A mortgage servicing right is created only when the act of servicing a mortgage loan is contractually separated from the underlying loan. A firm, for example, that originates a mortgage, sells it to a third party, and retains the servicing would report a mortgage servicing asset on its balance sheet, if certain conditions are met.

In response to these concerns, the regulators described a review of the Call Report requirements intended to reduce the number of items to be reported to the regulators. The regulators had started this effort to address Call Report issues soon after the most recent EGRPRA process had begun in June 2014. In the 2017 EGRPRA report, the regulators noted that they developed a new Call Report form for banks with assets of less than $1 billion and domestic offices only. For instance, according to the regulators, the new form reduced the number of items such banks had to report by 40 percent. Staff from the regulators told us that about 3,500 banks used the new small-bank reporting form in March 2017, which represented about 68 percent of the banks eligible to use the new form. OCC officials told us that an additional 100 federally chartered banks submitted the form for the 2017 second quarter reporting period. After the issuance of the 2017 EGRPRA report, in June 2017 the regulators issued additional proposed revisions to the three Call Report forms that banks are required to complete. These proposed changes are to become effective in June 2018.[50] For example, one of the proposed changes to the new community bank Call Report form would change the frequency of reporting certain data on non-accrual assets—nonperforming loans that are not generating their stated interest rate—from quarterly to semi-annually. In November 2017, the agencies issued further proposed revision to the community bank Call Report that would delete or consolidate a number of items and add a new, or raise certain existing, reporting thresholds. The proposed revision would take effect as of June 2018.[51]

Appraisals. The three bank regulators and NCUA received more than 160 comments during the 2017 EGRPRA process related to appraisal requirements. The commenters included banks and others that sought to raise the size of the loans that require appraisals, and a large number of appraisers that objected to any changes in the requirements According to the EGRPRA report, several professional appraiser associations argued that raising the threshold could undermine the safety and soundness of lenders and diminish consumer protection for mortgage financing. These commenters argued that increasing the thresholds could encourage banks to neglect collateral risk-management responsibilities.

[50] *See* Proposed Agency Information Collection Activities; Comment Request, 82 Fed. Reg. 29147 (June 27, 2017)

[51] *See* Proposed Agency Information Collection Activities; Comment Request, 82 Fed. Reg. 51908 (Nov. 8, 2017).

In response, in July 2017, the regulators proposed raising the threshold for when an appraisal is required from $250,000 to $400,000 for commercial real estate loans.[52] The regulators indicated that the appraisal requirements for 1-4 family residential mortgage loans above the current $250,000 would not be appropriate at the this time because they believed having such appraisals for loans above that level increased the safety of those loans and better protected consumers and because other participants in the housing market, such as the Department of Housing and Urban Development and the government-sponsored enterprises, also required appraisals for loans above that amount. However, the depository institution regulators included in the proposal a request for comment about the appraisal requirements for residential real estate and what banks think are other factors that should be included when considering the threshold for these loans. As part of the 2017 EGRPRA process, the regulators also received comments indicating that banks in rural areas were having difficulty securing appraisers. In the EGRPRA report, the regulators acknowledged this difficulty and in May 2017, the bank regulators and NCUA issued agency guidance on how institutions could obtain temporary waivers and use other means to expand the pool of persons eligible to prepare appraisals in cases in which suitable appraiser staff were unavailable. The agencies also responded to commenters who found the evaluation process confusing by issuing an interagency advisory on the process in March 2016.[53] Evaluations may be used instead of an appraisal for certain transactions including those under the threshold.

Frequency of safety and soundness examinations. As part of the 2017 EGRPRA process, the agencies also received comments requesting that they raise the total asset threshold for an insured depository institution to qualify for the extended 18-month examination cycle from $1 billion to $2 billion and to further extend the examinations cycle from 18 months to 36 months.

During the EGRPRA process, Congress took legislative action to reduce examination frequency for smaller, well-capitalized banks. In 2015, the FAST Act raised the threshold for the 18-month examination cycle from

[52] *See* Real Estate Appraisals, 82 Fed. Reg. 35478 (July 31, 2017).

[53] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, *Interagency Advisory on the Use of Evaluations in Real-Estate Related Transactions* (Washington, D.C.: Mar. 4, 2016).

less than $500 million to less than $1 billion for certain well-capitalized and well-managed depository institutions with an "outstanding" composite rating and gave the agencies discretion to similarly raise this threshold for certain depository institutions with an "outstanding" or "good" composite rating.[54] The agencies exercised this discretion and issued a final rule in 2016 making qualifying depository institutions with less than $1 billion in total assets eligible for an 18-month (rather than a 12-month) examination cycle.[55] According to the EGRPRA report, agency staff estimated that the final rules allowed approximately 600 more institutions to qualify for an extended 18-month examination cycle, bringing the total number of qualifying institutions to 4,793.

Community Reinvestment Act. The commenters in the 2017 EGRPRA process also raised various issues relating to the Community Reinvestment Act, including the geographic areas in which institutions were expected to provide loans to low- and moderate-income borrowers and whether credit unions should be required to comply with the act's requirements.[56]

The regulators noted that they were not intending to take any actions to revise regulations relating to this act because many of the revisions the commenters suggested would require changes to the statute (that is, legislative action). The regulators also noted that they had addressed some of the concerns by revising the Interagency Questions and Answers relating to this act in 2016. Furthermore, the agencies noted that they have been reviewing their existing examination procedures and practices to identify policy and process improvements.

BSA/AML. The regulators also received a number of comments as part of the 2017 EGRPRA process on the burden institutions encounter in

[54]*See* Pub. L. No. 114-94, Div. G, tit. LXXXIII, § 83001, 129 Stat. 1312, 1796 (2015) (amending 12 U.S.C. 1820(d)); 12 U.S.C. § 1820(d)(4). Each financial institution is assigned a composite rating based on an evaluation of six financial and operational components, which are also rated. The component ratings reflect an institution's capital adequacy, asset quality, management capabilities, earnings sufficiency, liquidity position, and sensitivity to market risk (commonly referred to as CAMELS ratings).

[55]*See* Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks, 81 Fed. Reg. 10063 (Feb. 29, 2016) (interim final rule) and 81 Fed. Reg. 90949 (Dec. 16, 2016) (final rule).

[56]Credit unions are not included under the definition of depository institutions under the purpose of the Community Reinvestment Act.

complying with BSA/AML requirements. These included the threshold for reporting currency transactions and suspicious activities. The regulators also received comments on both BSA/AML examination frequency and the frequency of safety and soundness examinations generally.

Agencies typically review BSA/AML compliance programs during safety and soundness examinations. As discussed previously, regulators allowed more institutions of outstanding or good composite condition to be examined every 18 months instead of every 12 months.[57] Institutions that qualify for less frequent safety-and-soundness examinations also will be eligible for less frequent BSA/AML examinations. For the remainder of the issues raised by commenters, the regulators noted they do not have the regulatory authority to revise the requirements but provided the comments to FinCEN, which has authority for these regulations. A letter with FinCEN's response to the comments was included as an appendix of the EGRPRA report. In the letter, the FinCEN Acting Director stated that FinCEN would work through the issues raised by the comments with its advisory group consisting of regulators, law enforcement staff, and representatives of financial institutions.

Additional Burden Reduction Actions. In addition to describing some changes in response to the comments deemed significant, the regulators' 2017 report also includes descriptions of additional actions the individual agencies have taken or planned to take to reduce the regulatory burden for banks, including community banks.

- The Federal Reserve Board noted that it changed its Small Bank Holding Company Policy Statement that allows small bank holding companies to hold more debt than permitted for larger bank holding companies.[58] In addition, the Federal Reserve noted that it had made changes to certain supervisory policies, such as issuing guidance on assessing risk management for banks with less than $50 billion in

[57]BSA/AML is examined as part of the bank's safety and soundness examination. Therefore, institutions with assets between $500 million and less than $1 billion that are now eligible for safety-and-soundness examinations every 18 months generally also will be subject to less frequent BSA reviews.

[58]The Federal Reserve Board's Small Bank Holding Company Policy Statement permits the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The policy excludes small bank holding companies, which own community banks, from certain consolidated capital requirements.

assets and launching an electronic application filing system for banks and bank holding companies.

- OCC noted that it had issued two final rules amending its regulations for licensing/chartering and securities-related filings, among other things. According to OCC staff, the agency conducted an internal review of its agency-specific regulations and many of the changes to these regulations came from the internal review. The agency also noted that it integrated its rules for national banks and federal savings associations where possible. In addition, OCC noted that it removed redundant and unnecessary information requests from those made to banks before examinations.
- FDIC noted that it had rescinded enhanced supervisory procedures for newly insured banks and reduced the consumer examination frequency for small and newly insured banks. Similarly to OCC, FDIC is integrating its rules for both non-state member banks and state-chartered savings and loans associations. In addition, FDIC noted it had issued new guidance on banks' deposit insurance filings and reduced paperwork for new bank applications.

NCUA 2017 EGRPRA Process and Results

The 2017 report also presents the results of NCUA's concurrent efforts to obtain and respond to comments as part of the EGRPRA process. NCUA conducts its review separately from the bank regulators' review. In four *Federal Register* notices in 2015, NCUA sought comments on 76 regulations that it administers. NCUA received about 25 comments raising concerns about 29 of its regulations, most of which were submitted by credit union associations. NCUA received no comments on 47 regulations.

NCUA's methodology for its regulatory review was similar to the bank regulators' methodology. According to NCUA, all comment letters responding to a particular notice were collected and reviewed by NCUA's Special Counsel to the General Counsel, an experienced, senior-level attorney with overall responsibility for EGRPRA compliance. NCUA staff told us that criteria applied by the Special Counsel in his review included relevance, depth of understanding and analysis exhibited by the comment, and degree to which multiple commenters expressed the same or similar views on an issue. The Special Counsel prepared a report summarizing the substance of each comment. The comment summary was reviewed by the General Counsel and circulated to the NCUA Board and reviewed by the Board members and staff.

NCUA identified in its report the following as significant issues relating to credit union regulation: (1) field of membership and chartering; (2) member business lending; (3) federal credit union ownership of fixed assets; (4) expansion of national credit union share insurance coverage; and (5) expanded powers for credit unions. For these, NCUA took various actions to address the issues raised in the comments. For example, NCUA modified and updated its field of credit union membership by revising the definition of a local community, rural district and underserved area, which provided greater flexibility to federal credit unions seeking to add a rural district to their field of membership. NCUA also lessened some of the restrictions on member lending to small business; and raised some of the asset thresholds for what would be defined as a small credit union so that fewer requirements would apply to these credit unions. Also, in April 2016, the NCUA Board issued a proposed rule that would eliminate the requirement that federal credit unions must have a plan by which they will achieve full occupancy of premises within an explicit time frame.[59] The proposal would allow for federal credit unions to plan for and manage their use of office space and related premises in accordance with their own strategic plans and risk-management policies.

Bank Regulators and NCUA 2007 EGRPRA Review Process and Results

The bank and credit union regulators' process for the 2007 EGRPRA review also began with *Federal Register* notices that requested comments on regulations. The regulators then reviewed and assessed the comments and issued a report in 2007 to Congress in which they noted actions they took in some of the areas raised by commenters.

Our analysis of the regulators' responses indicated that the regulators took responsive actions in a few areas. The regulators noted they already had taken action in some cases (including after completion of a pending study and as a result of efforts to work with Congress to obtain statutory changes). However, for the remaining specific concerns, the four regulators indicated that they would not be taking actions.

Similar to its response in 2017, NCUA discussed its responses to the significant issues raised about regulations in a separate section of the 2007 report. Our analysis indicated that NCUA took responsive actions in about half of the areas. For example, NCUA adjusted regulations in one case and in another case noted previously taken actions. For comments

[59] *See* Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises; Incidental Powers, 81 Fed. Reg. 24738 (Apr. 27, 2016).

related to three other areas, NCUA took actions not reflected in the 2007 report because the actions were taken over a longer time frame (in some cases, after 8 years). In the remaining areas, NCUA deemed actions as not being desirable in four cases and outside of its authority in two other cases.

Other Retrospective Reviews

The bank regulators do not conduct other retrospective reviews of regulations outside of the EGRPRA process. We requested information from the Federal Reserve, FDIC, and OCC about any discretionary regulatory retrospective reviews that they performed in addition to the EGRPRA review during 2012–2016. All three regulators reported to us they have not conducted any retrospective regulatory reviews outside of EGRPRA since 2012. However, under the Regulatory Flexibility Act (RFA), federal agencies are required to conduct what are referred to as section 610 reviews. The purpose of these reviews is to determine whether certain rules should be continued without change, amended, or rescinded consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities.[60] Section 610 reviews are to be conducted within 10 years of an applicable rule's publication. As part of other work, we assessed the bank regulators' section 610 reviews and found that the Federal Reserve, FDIC, and OCC conducted retrospective reviews that did not fully align with the Regulatory Flexibility Act's requirements.[61] Officials at each of the agencies stated that they satisfy the requirements to perform section 610 reviews through the EGRPRA review process. However, we found that the requirements of the EGRPRA reviews differ from those of the RFA-required section 610 reviews, and we made recommendations to these regulators to help ensure their compliance with this act in a separate report issued in January 2018.

In addition to participating in the EGRPRA review, NCUA also reviews one-third of its regulations every year (each regulation is reviewed every 3 years). NCUA's "one-third" review employs a public notice and comment process similar to the EGRPRA review. If a specific regulation does not receive any comments, NCUA does not review the regulation. For the 2016 one-third review, NCUA did not receive comments on 5 of 16 regulations and thus these regulations were not reviewed. NCUA

[60]*See* 5 U.S.C. § 610(a).

[61]GAO, *Financial Services Regulations: Procedures for Reviews under Regulatory Flexibility Act Need to Be Enhanced,* GAO-18-256 (Washington, D.C.: Jan. 30, 2018).

made technical changes to 4 of the 11 regulations that received comments.

In August 2017, NCUA staff announced they developed a task force for conducting additional regulatory reviews, including developing a 4-year agenda for reviewing and revising NCUA's regulations.[62] The primary factors they said they intend to use to evaluate their regulations will be the magnitude of the benefit and the degree of effort that credit unions must expend to comply with the regulations. Because the 4-year reviews will be conducted on all of NCUA's regulations, staff noted that the annual one-third regulatory review process will not be conducted again until 2020.

Limitations of Reviews of Burden Include CFPB Exclusion and Lack of Quantitative Analysis

Our analysis of the EGRPRA review found three limitations to the current process.

CFPB Not Included and Significant Mortgage Regulations Not Assessed

First, the EGRPRA statute does not include CFPB and thus the significant mortgage-related regulations and other regulations that it administers—regulations that banks and credit unions must follow—were not included in the EGRPRA review. Under the Dodd-Frank Act, CFPB was given financial regulatory authority, including for regulations implementing the Home Mortgage Disclosure Act (Regulation C); the Truth-in-Lending Act (Regulation Z); and the Truth-in-Savings Act (Regulation DD). These regulations apply to many of the activities that banks and credit unions conduct; the four depository institution regulators conduct the large majority of examinations of these institutions' compliance with these CFPB-administered regulations.[63] However, EGRPRA was not amended

[62] *See* Regulatory Reform Agenda, 82 Fed. Reg. 39702 (Aug. 22, 2017).

[63] CFPB has primary supervisory and enforcement authority for federal consumer protection laws for depository institutions with more than $10 billion in assets and for their affiliates. *See* 12 U.S.C. § 5515. The Federal Reserve, OCC, FDIC, and NCUA—which previously supervised and examined all depository institutions and credit unions for consumer protection—share with CFPB supervisory and enforcement authority for certain consumer protection laws for those depository institutions with more than $10 billion in assets and for their affiliates. In addition, they continue to supervise for consumer protection institutions n that have $10 billion or less in assets.

after the Dodd-Frank Act to include CFPB as one of the agencies that must conduct the EGRPRA review.

During the 2017 EGRPRA review, the bank regulators only requested public comments on consumer protection regulations for which they have regulatory authority. But the banking regulators still received some comments on the key mortgage regulations and the other regulations that CFPB now administers. Our review of 2017 forum transcripts identified almost 60 comments on mortgage regulations, such as HMDA and TRID.[64]

The bank regulators could not address these mortgage regulation-related comments because they no longer had regulatory authority over these regulations; instead, they forwarded these comment letters to CFPB staff. According to CFPB staff, their role in the most recent EGRPRA process was very limited. CFPB staff told us they had no role in assessing the public comments received for purposes of the final 2017 EGRPRA report. According to one bank regulator, the bank regulators did not share non-mortgage regulation-related letters with CFPB staff because those comment letters did not involve CFPB regulations. Another bank regulator told us that CFPB was offered the opportunity to participate in the outreach meetings and were kept informed of the EGRPRA review during the quarterly FFIEC meetings that occurred during the review. Before the report was sent to Congress, CFPB staff said that they reviewed several late-stage drafts, but generally limited their review to ensuring that references to CFPB's authority and regulations and its role in the EGRPRA process were properly characterized and explained. As a member of FFIEC, which issued the final report, CFPB's Director was given an opportunity to review the report again just prior to its approval by FFIEC.

CFPB must conduct its own reviews of regulations after they are implemented. Section 1022(d) of the Dodd-Frank Act requires CFPB to conduct an assessment of each significant rule or order adopted by the bureau under federal consumer financial law.[65] CFPB must publish a report of the assessment not later than 5 years after the effective date of

[64]A number of comments included statements on the Home Mortgage Disclosure Act, TRID, and Qualified Mortgage/Ability-to-Repay regulations.

[65]*See* Pub. L. No. 111-203, § 1022(d), 124 Stat. 1376, 1984 (2010) (codified at 12 U.S.C. § 5512(d)).

such rule or order. The assessment must address, among other relevant factors, the rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and specific goals stated by CFPB. The assessment also must reflect available evidence and any data that CFPB reasonably may collect. Before publishing a report of its assessment, CFPB must invite public comment on recommendations for modifying, expanding, or eliminating the significant rule or order.

CFPB announced in *Federal Register* notices in spring 2017 that it was commencing assessments of rules related to Qualified Mortgage/Ability-to-Repay requirements, remittances, and mortgage servicing regulations.[66] The notices described how CFPB planned to assess the regulations. In each notice, CFPB requested comment from the public on the feasibility and effectiveness of the assessment plan, data, and other factual information that may be useful for executing the plan; recommendations to improve the plan and relevant data; and data and other factual information about the benefits, costs, impacts, and effectiveness of the significant rule. Reports of these assessments are due in late 2018 and early 2019. According to CFPB staff, the requests for data and other factual information are consistent with the statutory requirement that the assessment must reflect available evidence and any data that CFPB reasonably may collect. The *Federal Register* notices also describe other data sources that CFPB has in-house or has been collecting pursuant to this requirement.

CFPB staff told us that they have not yet determined whether certain other regulations that apply to banks and credit unions, such as the revisions to TRID and HMDA requirements, will be designated as significant and thus subjected to the one-time assessments. CFPB staff also told us they anticipate that within approximately 3 years after the effective date of a rule, it generally will have determined whether the rule is a significant rule for section 1022(d) assessment purposes.

In tasking the bank regulators with conducting the EGRPRA reviews, Congress indicated its intent was to require these regulators to review all regulations that could be creating undue burden on regulated institutions.

[66] *See* Request for Information Regarding Remittance Rule Assessment, 82 Fed. Reg. 15009 (March 24, 2017); Request for Information Regarding 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment, 82 Fed. Reg. 21952 (May 11, 2017); and Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment, 82 Fed. Reg. 25246 (June 1, 2017).

According to a Senate committee report relating to EGRPRA, the purpose of the legislation was to minimize unnecessary regulatory impediments for lenders, in a manner consistent with safety and soundness, consumer protection, and other public policy goals, so as to produce greater operational efficiency.[67] Some in Congress have recognized that the omission of CFPB in the EGRPRA process is problematic, and in 2015 legislation was introduced to require that CFPB—and NCUA—formally participate in the EGRPRA review.[68]

Currently, without CFPB's participation, key regulations that affect banks and credit unions may not be subject to the review process. In addition, these regulations may not be reviewed if CFPB does not deem them significant. Further, if reviewed, CFPB's mandate is for a one-time, not recurring, review. CFPB staff told us that they have two additional initiatives designed to review its regulations, both of which have been announced in CFPB's spring and fall 2017 Semiannual Regulatory Agendas. First, CFPB launched a program to periodically review individual existing regulations—or portions of large regulations—to identify opportunities to clarify ambiguities, address developments in the marketplace, or modernize or streamline provisions.[69] Second, CFPB launched an internal task force to coordinate and bolster their continuing efforts to identify and relieve regulatory burdens, including with regard to small businesses such as community banks that potentially will address any regulation the agency has under its jurisdiction. Staff told us the agency has been considering suggestions it received from community banks and others on ways to reduce regulatory burden. However, CFPB has not provided public information specifically on the extent to which it intends to review regulations applicable to community banks and credit unions and other institutions or provided information on the timing and frequency of the reviews. In addition, it has not indicated the extent to which it will coordinate the reviews with the federal depository institution regulators as part of the EGRPRA reviews. Until CFPB publicly provides additional information indicating its commitment to periodically review the

[67]Committee on Banking, Housing, and Urban Affairs, Economic Growth and Regulatory Paperwork Reduction Act of 1995, S. Rep. No. 104-185 (1995).

[68]*See* Financial Regulatory Improvement Act of 2015, S. 1484, § 125, 114th Cong.

[69]CFPB announced in its fall 2017 Semiannual Regulatory Agenda that for its first review, the CFPB expects to focus primarily on subparts B and G of Regulation Z, which implement the Truth-in-Lending Act with respect to open-end credit generally and credit cards in particular.

burden of all its regulations, community banks, credit unions, and other depository institutions may face diminished opportunities for relief from regulatory burden.

Regulators Have Not Conducted or Reported Quantitative Analyses

Second, the federal depository institution regulators have not conducted or reported on quantitative analyses during the EGRPRA process to help them determine if changes to regulations would be warranted. Our analysis of the 2017 report indicated that in responses to comments in which the regulators did not take any actions, the regulators generally only provided their arguments against taking actions and did not cite analysis or data to support their narrative. In contrast, other federal agencies that are similarly tasked with conducting retrospective regulatory reviews are required to follow certain practices for such reviews that could serve as best practices for the depository institution regulators. For example, the Office of Management and Budget's Circular A-4 guidance on regulatory analysis notes that a good analysis is transparent and should allow qualified third parties reviewing such analyses to clearly see how estimates and conclusions were determined.[70] In addition, executive branch agencies that are tasked under executive orders to conduct retrospective reviews of regulations they issue generally are required under these orders to collect and analyze quantitative data as part of assessing the costs and benefits of changing existing regulations.[71]

However, EGRPRA does not require the regulators to collect and report on any quantitative data they collected or analyzed as part of assessing the potential burden of regulations. Conducting and reporting on how they analyzed the impact of potential regulatory changes to address burden could assist the depository institution regulators in conducting their EGRPRA reviews. For example, as discussed previously, Community Reinvestment Act regulations were deemed a significant issue, with commenters questioning the relevance of requiring small banks to make

[70]Office of Management and Budget, *Regulatory Analysis*, Circular A-4 (Washington, D.C.: Sept. 17, 2003). As independent agencies, the depository institution regulators that conduct the EGRPRA review are not required to follow Circular A-4.

[71]GAO, *Reexamining Regulations Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO-14-268 (Washington D.C.: Apr. 11, 2014). In this report, we reviewed executive orders, including Executive Order 13563, "Improving Regulation and Regulatory Review," and Executive Order 13610, "Identifying and Reducing Regulatory Burdens." We found that the orders included eight primary requirements for executive branch agencies to follow when conducting retrospective reviews of regulations, including the need to conduct a quantifiable assessment of current costs and benefits of changing regulations.

community development loans and suggesting that the asset threshold for this requirement be raised from $1 billion to $5 billion. The regulators told us that if the thresholds were raised, then community development loans would decline, particularly in underserved communities. However, regulators did not collect and analyze data for the EGRPRA review to determine the amount of community development loans provided by banks with assets of less than $1 billion; including a discussion of quantitative analysis might have helped show that community development loans from smaller community banks provided additional credit in communities—and thus helped to demonstrate the benefits of not changing the requirement as commenters requested.

By not performing and reporting quantitative analyses where appropriate in the EGRPRA review, the regulators may be missing opportunities to better assess regulatory impacts after a regulation has been implemented, including identifying the need for any changes or benefits from the regulations and making their analyses more transparent to stakeholders. As the Office of Management and Budget's Circular A-4 guidance on the development of regulatory analysis noted, sound quantitative estimates of costs and benefits, where feasible, are preferable to qualitative descriptions of benefits and costs because they help decision makers understand the magnitudes of the effects of alternative actions.[72] By not fully describing their rationale for the analyses that supported their decisions, regulators may be missing opportunities to better communicate their decisions to stakeholders and the public.

Reviews Have Not Considered Cumulative Effects of Regulations

Lastly, in the EGRPRA process, the federal depository institution regulators have not assessed the ways that the cumulative burden of the regulations they administer may have created overlapping or duplicative requirements. Under the current process, the regulators have responded to issues raised about individual regulations based on comments they have received, not on bodies of regulations. However, congressional intent in tasking the depository institution regulators with the EGRPRA reviews was to ensure that they considered the cumulative effect of financial regulations. A 1995 Senate Committee on Banking, Housing, and Urban Affairs report stated while no one regulation can be singled out as being the most burdensome, and most have meritorious goals, the

[72]Office of Management and Budget, *Regulatory Analysis*, Circular A-4 (Washington, D.C.: Sept. 17, 2003).

aggregate burden of banking regulations ultimately affects a bank's operations, its profitability, and the cost of credit to customers.[73] For example, financial regulations may have created overlapping or duplicative regulations in the areas of safety and soundness. One primary concern noted in the EGRPRA 2017 report was the amount of information or data banks are required to provide to regulators. For example, the cumulative burden of information collection was raised by commenters in relation to Call Reports, Community Reinvestment Act, and BSA/AML requirements. But in the EGRPRA report, the regulators did not examine how the various reporting requirements might relate to each other or how they might collectively affect institutions.

In contrast, the executive branch agencies that conduct retrospective regulatory reviews must consider the cumulative effects of their own regulations, including cumulative burdens.[74] For example, Executive Order 13563 directs agencies, to the extent practicable, to consider the costs of cumulative regulations.[75] Executive Order 13563 does not apply to independent regulatory agencies such as the Federal Reserve, FDIC, OCC, NCUA, or CFPB. A memorandum from the Office of Management and Budget provided guidance to the agencies required to follow this order for assessing the cumulative burden and costs of regulations.[76] The actions suggested for careful consideration include conducting early consultations with affected stakeholders to discuss potential interactions between rulemaking under consideration and existing regulations as well as other anticipated regulatory requirements. The executive order also directs agencies to consider regulations that appear to be attempting to achieve the same goal. However, other researchers often acknowledge that cumulative assessments of burden are difficult. Nevertheless, until the Federal Reserve, FDIC, OCC, and NCUA identify ways to consider the cumulative burden of regulations, they may miss opportunities to streamline bodies of regulations to reduce the overall compliance burden among financial institutions, including community banks and credit unions. For example, regulations applicable to specific activities of banks,

[73]Committee on Banking, Housing, and Urban Affairs, Economic Growth and Regulatory Paperwork Reduction Act of 1995, S. Rep. No 104-185 (1995).

[74]See GAO-14-268 for additional information.

[75]*See* Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011).

[76]The Office of Management and Budget additional guidance about Executive Order 13563 was issued on March 20, 2012.

such as lending or capital, could be assessed to determine if they have overlapping or duplicative requirements that could be revised without materially reducing the benefits sought by the regulations.

Conclusions

New regulations for financial institutions enacted in recent years have helped protect mortgage borrowers, increase the safety and soundness of the financial system, and facilitate anti-terrorism and anti-money laundering efforts. But the regulations also entail compliance burdens, particularly for smaller institutions such as community banks and credit unions, and the cumulative burden on these institutions can be significant. Representatives from the institutions with which we spoke cited three sets of regulations—HMDA, BSA/AML, and TRID—as most burdensome for reasons that included their complexity. In particular, the complexity of TRID regulations appears to have contributed to misunderstandings that in turn caused institutions to take unnecessary actions. While regulators have acted to reduce burdens associated with the regulations, CFPB has not assessed the effectiveness of its TRID guidance. Federal internal control standards require agencies to analyze and respond to risks to achieving their objectives, and CFPB's objectives include addressing regulations that are unduly burdensome. Assessing the effectiveness of TRID guidance represents an opportunity to reduce misunderstandings that create additional burden for institutions and also affect individual consumers (for instance, by delaying mortgage closings).

The federal depository institution regulators (FDIC, Federal Reserve, OCC, as well as NCUA) also have opportunities to enhance the activities they undertake during EGRPRA reviews. Congress intended that the burden of all regulations applicable to depository institutions would be periodically assessed and reduced through the EGRPRA process. But because CFPB has not been included in this process, the regulations for which it is responsible were not assessed, and CFPB has not yet provided public information about what regulations it will review, and when, and whether it will coordinate with other regulators during EGPRA reviews. Until such information is publicly available, the extent to which the regulatory burden of CFPB regulation will be periodically addressed remains unclear. The effectiveness of the EGRPRA process also has been hampered by other limitations, including not conducting and reporting on depository institution regulators' analysis of quantitative data and assessing the cumulative effect of regulations on institutions. Addressing these limitations in their EGRPRA processes likely would make the analyses the regulators perform more transparent, and potentially result in additional burden reduction.

Recommendations for Executive Action

We make a total of 10 recommendations, which consist of 2 recommendations to CFPB, 2 to FDIC, 2 to the Federal Reserve, 2 to OCC, and 2 to NCUA.

- The Director of CFPB should assess the effectiveness of TRID guidance to determine the extent to which TRID's requirements are accurately understood and take steps to address any issues as necessary. (Recommendation 1)
- The Director of CFPB should issue public information on its plans for reviewing regulations applicable to banks and credit unions, including information describing the scope of regulations the timing and frequency of the reviews, and the extent to which the reviews will be coordinated with the federal depository institution regulators as part of their periodic EGRPRA reviews. (Recommendation 2)
- The Chairman, FDIC, should, as part of the EGRPRA process, develop plans for their regulatory analyses describing how they will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process. (Recommendation 3)
- The Chairman, FDIC, should, as part of the EGRPRA process, develop plans for conducting evaluations that would identify opportunities for streamlining bodies of regulation. (Recommendation 4)
- The Chair, Board of Governors of the Federal Reserve System, should, as part of the EGRPRA process develop plans for their regulatory analyses describing how they will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process. (Recommendation 5)
- The Chair, Board of Governors of the Federal Reserve System, should, as part of the EGRPRA process, develop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation. (Recommendation 6)
- The Comptroller of the Currency should, as part of the EGRPRA process, develop plans for their regulatory analyses describing how they will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process. (Recommendation 7)
- The Comptroller of the Currency should, as part of the EGRPRA process, develop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation. (Recommendation 8)

- The Chair of NCUA should, as part of the EGRPRA process, develop plans for their regulatory analyses describing how they will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process. (Recommendation 9)
- The Chair of NCUA should, as part of the EGRPRA process, develop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation. (Recommendation 10)

Agency Comments and Our Evaluation

We provided a draft of this report to CFPB, FDIC, FinCEN, the Federal Reserve, NCUA, and OCC. We received written comments from CFPB, FDIC, the Federal Reserve, NCUA, and OCC that we have reprinted in appendixes II through VI, respectively. CFPB, FDIC, FinCEN, the Federal Reserve, NCUA, and OCC also provided technical comments, which we incorporated as appropriate.

In its written comments, CFPB agreed with the recommendation to assess its TRID guidance to determine the extent to which it is understood. CFPB stated it intends to solicit public input on how it can improve its regulatory guidance and implementation support. In addition, CFPB agreed with the recommendation on issuing public information on its plan for reviewing regulations. CFPB committed to developing additional plans with respect to their reviews of key regulations and to publicly releasing such information and in the interim, CFPB stated it intends to solicit public input on how it should approach reviewing regulations.

FDIC stated that it appreciated the two recommendations and stated that it would work with the Federal Reserve and OCC to find the most appropriate ways to ensure that the three regulators continue to enhance their rulemaking analyses as part of the EGRPRA process. In addition, FDIC stated that as part of the EGRPRA review process, it would continue to monitor the cumulative effects of regulation through for example, a review of the community and quarterly banking studies and community bank Call Report data.

The Federal Reserve agreed with the two recommendations pertaining to the EGRPRA process. Regarding the need conduct and report on quantitative analysis whenever feasible to strengthen and to increase the transparency of the EGRPRA process, the Federal Reserve plans to coordinate with FDIC and OCC to identify opportunities to conduct quantitative analyses where feasible during future EGRPRA reviews. With respect to the second recommendation, the Federal Reserve agreed that the cumulative impact of regulations on depository institutions is important and plans to coordinate with FDIC and OCC to identify further opportunities to seek comment on bodies of regulations and how they could be streamlined.

NCUA acknowledged the report's conclusions as part of their voluntary compliance with the EGRPRA process; NCUA should improve its qualitative analysis and develop plans for continued reductions to regulatory burden within the credit union industry. In its letter, NCUA noted it has appointed a regulatory review task force charged with reviewing and developing a four-year plan for revising their regulations and the review will consider the benefits of NCUA's regulations as well as the burden they have on credit unions.

In its written comments, OCC stated that it understood the importance of GAO's recommendations. They stated they OCC will consult and coordinate with the Federal Reserve and FDIC to develop plans for regulatory analysis, including how the regulators should conduct and report on quantitative analysis and also, will work with these regulators to increase the transparency of the EGRPRA process. OCC also stated it will consult with these regulators to develop plans, as part of the EGRPRA process, to conduct evaluations that identify ways to decrease the regulatory burden created by bodies of regulations.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to CFPB, FDIC, FinCEN, the Federal Reserve, NCUA, and OCC. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8678 or evansl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VII.

Sincerely yours,

Lawrance L. Evans, Jr.

Lawrance L. Evans, Jr.
Managing Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

This report examines the burdens that regulatory compliance places on community banks and credit unions and actions that federal regulators have taken to reduce these burdens; specifically: (1) the financial regulations that community banks and credit unions reported viewing as the most burdensome, the characteristics of those regulations that make them burdensome, and the benefits are associated with those regulations and (2) federal financial regulators' efforts to reduce any existing regulatory burden on community banks and credit unions.

To identify the regulations that community banks and credit unions viewed as the most burdensome, we first constructed a sample frame of financial institutions that met certain criteria for being classified as community banks or community-focused credit unions for the purposes of this review. These sample frames were then used as the basis for drawing our non-probability samples of institutions for purposes of interviews, focus group participation, and document review. Defining a community bank is important because, as we have reported, regulatory compliance may be more burdensome for community banks and credit unions than for larger banks because they are not as able to benefit from economies of scale in compliance resources.[1] While there is no single consensus definition for what constitutes a community bank, we reviewed criteria for defining community banks developed by the Federal Deposit Insurance Corporation (FDIC), officials from the Independent Community Bankers Association, the Office of the Comptroller of the Currency (OCC).[2] Based on this review, we determined that institutions that had the following characteristics would be the most appropriate to include in our universe of institutions, (1) fewer total assets, (2) engage in traditional lending and deposit taking activities, have limited geographic scope, and (3) did not have complex operating structures.

To identify banks that met these characteristics, we began with all banks that filed a Consolidated Reports of Condition and Income (Call Report) for the first quarter of 2016 (March 31, 2016) and are not themselves subsidiaries of another bank that filed a Call Report.[3] We then excluded

[1]GAO, *Community Banks and Credit Unions: Impact of the Dodd-Frank Act Depends Largely on Future Rule Makings*. GAO-12-881 (Washington, D.C.: Sep. 13, 2012).

[2]See Federal Deposit Insurance Corporation, *Community Banking Study*, December 2012.

[3]Every national bank, state member bank, insured state nonmember bank, and savings association is required to file a consolidated Call Report normally as of the close of business on the last calendar day of each calendar quarter.

banks using an asset-size threshold, to ensure we are including only small institutions. Based on interviews with regulators and our review of the FDIC's community bank study, we targeted institutions around the $1 billion in assets as the group that could be relatively representative of the experiences of many community banks in complying with regulations. Upon review of the Call Reports data, we found that the banks in the 90th percentile by asset size were had about $1.2 billion, and we selected this to be an appropriate cutoff for our sample frame. In addition we excluded institutions with characteristics suggesting they do not engage in typical community banking activities like such as deposit-taking and lending; and those with characteristics suggesting they conduct more specialized operations not typical of community banking, such as credit card banks.[4] In addition to ensure that we excluded banks whose views of regulatory compliance might be influenced by being part of a large and/or complex organization, we also excluded banks with foreign offices and banks that are subsidiaries of either foreign banks or of holding companies with $50 billion or more in consolidated assets. Finally, as a practical matter, we excluded banks for which we could not obtain data on one or more of the characteristics listed below.

We also relied on a similar framework to construct a sample frame for credit unions. We sought to identify credit unions that were relatively small, engaged in traditional lending and deposit taking activities, and had limited geographic scope. To do this, we began with all insured credit unions that filed a Call Report for the first quarter of 2016 (March 31, 2016). We then excluded credit unions using an asset-size threshold of $860 million, which is the 95th percentile of credit unions, to ensure we are including only smaller institutions. The percentile of credit unions was higher than the percentile of banks because there are more large banks than there are credit unions. We then excluded credit unions that did not engage in activities that are typical of community lending, such as taking deposits, making loans and leases, and providing consumer checking accounts, as well as those credit unions with headquarters outside of the United States.

We assessed the reliability of data from FFIEC, FDIC, the Federal Reserve Bank of Chicago, and NCUA by reviewing relevant documentation and electronically testing the data for missing values or obvious errors, and we found the data from these sources to be

[4]For example, we excluded banks that were considered credit card banks.

sufficiently reliable for the purpose of creating sample frames of community banks and credit unions. The sample frames were then used as the basis for drawing our nonprobability samples of institutions for purposes of interviews and focus groups.

To identify regulations that community banks and credit unions viewed as among the most burdensome, we conducted structured interviews and focus groups with a sample of a total of 64 community banks and credit unions. To reduce the possibility of bias, we selected the institutions to ensure that banks and credit unions with different asset sizes and from different regions of the country were included. We also included at least one bank overseen by each of the three primary federal depository institution regulators, Federal Reserve, FDIC, NCUA, and OCC in the sample. We interviewed 17 institutions (10 banks and 7 credit unions) about which regulations their institutions experienced the most compliance burden. On the basis of the results of these interviews, we determined that considerable consensus existed among these institutions as to which regulations were seen as most burdensome, including those relating to mortgage fees and terms disclosures to consumers, mortgage borrower and loan characteristics reporting, and anti-money laundering activities.[5] As a result, we determined to conduct focus groups with institutions to identify the characteristics of the regulations identified in our interviews that made these regulations burdensome. To identify the burdensome characteristics of the regulations identified in our preliminary interviews, we selected institutions to participate in three focus groups of community banks and three focus groups of credit unions.

- For the first focus group of community banks, we randomly selected 20 banks among 647 banks between $500 million and $1 billion located in nine U.S. census geographical areas using the sample frame of community banks we developed, and contacted them asking for their participation. Seven of the 20 banks agreed to participate in the first focus group. However, mortgages represented a low percentage of the assets of two participants in the first focus group, so we revised our selection criteria because two of the regulations identified as burdensome were related to mortgages.

[5]Home Mortgage Disclosure Act and its implementing regulation, Regulation C (codified at 12 C.F.R. pt. 1003); BSA/AML statutes include the Currency and Foreign Transactions Reporting Act, commonly known as the Bank Secrecy Act (BSA), and the 2001 USA PATRIOT Act; Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth-in-Lending Act (Regulation Z) (codified at 12 C.F.R. pt. 1024 and 12 C.F.R. pt. 1026).

- For the remaining two focus groups with community banks, we randomly selected institutions with more than $45 million and no more than $1.2 billion in assets to ensure that they would be required to comply with the mortgage characteristics reporting and with at least a 10 percent mortgage to asset ratio to better ensure that they would be sufficiently experienced with mortgage regulations. After identifying the large percentage of FDIC regulated banks in the first 20 banks we contacted, we decided to prioritize contact with banks regulated by OCC and the Federal Reserve for the institutions on our list. When banks declined or when we determined an institution merged or was acquired, we selected a new institution from that state and preferenced institutions regulated by OCC and the Federal Reserve.

The three focus groups totaled 23 community banks with a range of assets. We used a similar selection process for three focus groups of credit unions consisting of 23 credit unions. We selected credit unions with at least $45 million in assets so that they would be required to comply with the mortgage regulations and with at least a 10 percent mortgage-to-asset ratio.

During each of the focus groups, we asked the representatives from participating institutions what characteristics of the relevant regulations made them burdensome with which to comply. We also polled them about the extent to which they had to take various actions to comply with regulations, including hiring or expanding staff resources, investing in additional information technology resources, or conducting staff training. During the focus groups, we also confirmed with the participants that the three sets of regulations (on mortgage fee and other disclosures to consumers, reporting of mortgage borrower and loan characteristics, and anti-money laundering activities) were generally the ones they found most burdensome.

To identify in more detail the steps a community bank or credit union may take to comply with the regulations identified as among the most burdensome, we also conducted an in-depth on-site interview with one community bank. We selected this institution by limiting the community bank sample to only those banks in the middle 80 percent of the distribution in terms of assets, mortgage lending, small business lending, and lending in general that were no more than 70 miles from Washington, D.C. We limited the sample in this way to ensure that the institution was not an outlier in terms of activities or size, and to limit the travel resources needed to conduct the site visit.

We also interviewed associations representing consumers to understand the benefits of these regulations. These groups were selected using professional judgement of their knowledge of relevant banking regulations. We interviewed associations representing banks and credit unions.

To identify the requirements of the regulations identified as among the most burdensome, we reviewed the Home Mortgage Disclosure Act (HMDA) and its implementing regulation, Regulation C; Bank Secrecy Act and anti-money laundering (BSA/AML) regulations, including those deriving from the Currency and Foreign Transactions Reporting Act, commonly known as the Bank Secrecy Act (BSA), and the 2001 USA PATRIOT Act; and the Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (RESPA) with the implementing Regulation X; and the Truth-in-Lending Act (TILA) with implementing Regulation Z. We reviewed the Consumer Financial Protection Bureau's (CFPB) small entity guidance and supporting materials on the TILA-RESPA Integrated Disclosure (TRID) regulation and HMDA to clarify the specific requirements of each rule and to analyze the information included in the CFPB guidance.

We interviewed staff from each of the federal regulators responsible for implementing the regulations, as well as from the federal regulators responsible for examining community banks and credit unions. To identify the potential benefits of the regulations that were considered burdensome by community banks and credit unions, we interviewed representatives from four community groups to document their perspectives on the benefits provided by the identified regulations.

To determine whether the bank regulators had required banks to comply with certain provisions from which the institutions might be exempt, we identified eight exemptions from the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 from which community banks and credit unions should be exempt and reviewed a small group of the most recent examinations to identify instances in which a regulator may not have applied an exemption for which a bank was eligible.[6] We reviewed 20 safety and soundness and consumer compliance examination reports of community banks and eight safety and soundness examination reports of credit unions. The bank examination reports we reviewed were for the first 20 community banks we contacted requesting participation in the first focus group. The bank examination reports included examinations from all three bank regulators (FDIC, Federal Reserve, and OCC). The NCUA examination reports we reviewed were for the eight credit unions that participated in the second focus group of credit unions. Because of the limited number of the examinations we reviewed, we cannot generalize whether regulators extended the exemptions to all qualifying institutions.

To assess the federal financial regulators' efforts to reduce the existing regulatory burden on community banks and credit unions, we identified the mechanisms the regulators used to identify burdensome regulations and actions to reduce potential burden. We reviewed laws and congressional and agency documentation. More specifically, we reviewed the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) that requires the Federal Reserve, FDIC, and OCC to review all their regulations every 10 years and identify areas of the regulations that are outdated, unnecessary, or unduly burdensome and reviewed the 1995 Senate Banking Committee report, which described the intent of the legislation.[7] We reviewed the *Federal Register* notices that bank

[6]Under CFPB's current rules, these exemptions included (1) a special category of qualified mortgage, which applies to creditors that, together with their affiliates, did not originate more than 2,000 first-lien covered transactions (excluding loans held in portfolio) in the preceding calendar year; had, with their affiliates that regularly extended covered transactions, less than $2 billion in assets at the end of the proceeding calendar year; and, for an exemption allowing the origination of balloon payment qualified mortgages, originated a first-lien covered transaction on a property located in a rural or underserved area in the proceeding calendar year; (2) escrow account exemption—which applies to creditors that meet both the same small creditor, and small creditor operating in a rural or underserved area, requirements specified above for the qualified mortgage exemption; (3) TRID exemption—which applies to lenders that normally do not extend consumer credit; (4) appraisals for higher-priced mortgage exemption—which applies to creditors of mortgage transactions of $25,000 or less and creditors of certain manufactured home loans; (5) mortgage servicing exemption—which applies to servicers that service 5,000 and less mortgage loans; (6) international remittances exemption—which applies to companies that consistently provide 100 or fewer remittance transfers per year; (7) debit interchanges fee cap exemption—which applies to issuers, together with their affiliates, that have less than $10 billion in assets; and (8) regulatory capital rule stress test exemption—which applies to banks with less than $10 billion in total assets (they are not required or expected to conduct institution-wide stress testing).

[7]12 U.S.C. § 3311; Committee on Banking, Housing, and Urban Affairs, Economic Growth and Regulatory Paperwork Reduction Act of 1995, S. Rep. No 104-185 (1995).

regulators and NCUA published requesting comments on their regulations. We also reviewed over 200 comment letters that the regulators had received through the EGRPRA process from community banks, credit unions, their trade associations, and others, as well as the transcripts of all six public forums regulators held as part the 2017 EGRPRA regulatory review efforts they conducted. We analyzed the extent to which the depository institutions regulators addressed the issues raised in comments received for the review. In assessing the 2017 and 2007 EGRPRA reports sent to Congress, we reviewed the significant issues identified by the regulators and determined the extent to which the regulators proposed or took actions in response to the comments relating to burden on small entities.

We compared the requirements of Executive Orders 12866, 13563, and 13610 issued by Office of Management and Budget with the actions taken by the regulators in implementing their 10-year regulatory retrospective review. The executive orders included requirements on how executive branch agencies should conduct retrospective reviews of their regulations.

For both objectives, we interviewed representatives from CFPB, FDIC, Federal Reserve, Financial Crimes Enforcement Network, NCUA, and OCC to identify any steps that regulators took to reduce the compliance burden associated with each of the identified regulations and to understand how they conduct retrospective reviews. We also interviewed representatives of the Small Business Administration's Office of Advocacy, which reviews and comments on the burdens of regulations affecting small businesses, including community banks.

We conducted this performance audit from March 2016 to February 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Consumer Financial Protection Bureau

Consumer Financial Protection Bureau
1700 G Street, N.W., Washington, DC 20552

January 18, 2018

Lawrence L. Evans, Jr.,
Managing Director, Financial Markets and Community Investment
Government Accountability Office
441 G Street, NW
Washington DC, 20548

Dear Mr. Evans:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report, titled *Community Banks and Credit Unions: Regulators Could Take Additional Steps to Address Compliance Burdens (GAO-18-213).* We greatly appreciate GAO's work over the course of this engagement and believe the report provides valuable insights regarding (1) the regulations that community banks and credit unions identified as being the most burdensome and (2) the efficacy of federal financial regulators' regulatory review programs.

The Bureau is committed to fulfilling its statutory objective of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.[1] The Bureau recognizes the critical role community banks and credit unions play in the financial marketplace, and the unique challenges that regulatory compliance can pose for them. GAO's work in this report, including interviewing and conducting focus groups with representatives of over 60 community banks and credit unions, provides valuable information that will further inform the Bureau's work.

After identifying the regulations that community banks and credit unions stated were most burdensome, the report found that some of the burden affecting community banks and credit unions stemmed from misunderstandings of regulatory requirements, leading institutions to take actions not actually required. Specifically, GAO found that community banks and credit unions were confused about the Bureau's TILA-RESPA Integrated Disclosure rule (TRID). Therefore, GAO recommended that the Bureau "assess the effectiveness of TRID guidance to determine the extent to which TRID's requirements are accurately understood and take steps to address any issues as necessary."

The Bureau agrees with this recommendation and commits to evaluating the effectiveness of its guidance and updating it as appropriate. As such, the Bureau intends to solicit public input on how the Bureau can improve its regulatory guidance and implementation support.

[1] 12 U.S.C. 5511(b)(3).

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GAO also examined how federal financial regulators addressed regulatory burden through regulatory review. With respect to the Bureau, GAO found that because the Bureau is not required to participate in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) review process, key regulations that affect banks and credit unions may not be subject to review. Therefore, GAO recommended that the Bureau "issue public information on its plans for reviewing regulations applicable to banks and credit unions, including information describing the scope of regulations the timing and frequency of the reviews, and the extent to they will be coordinated with the federal depository institution regulators as part of their periodic EGRPRA reviews."

The Bureau agrees with this recommendation and commits to developing additional plans with respect to the review of key regulations and to publicly releasing such information. In the interim, the Bureau intends to solicit public input on how it should approach reviewing regulations.

The Bureau looks forward to continuing to work with GAO as it monitors the Bureau's progress in implementing these recommendations.

Sincerely,

David Silberman
Associate Director for Research, Markets, and Regulations

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Appendix III: Comments from the Board of Governors of the Federal Reserve System

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE
GENERAL COUNSEL

January 11, 2018

Mr. Lawrance Evans, Jr.
Managing Director
Financial Markets and Community Investment
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Evans:

Thank you for providing the Board of Governors of the Federal Reserve System ("Federal Reserve" or "Board") with an opportunity to review the final draft of the Government Accountability Office ("GAO") report titled: *Community Banks and Credit Unions: Regulators Could Take Additional Steps to Address Compliance Burdens* (GAO-18-213). The draft report reviews compliance burdens reported by community banks and credit unions and the actions taken by depository institution regulators to address such burdens. We appreciate the report's recognition of the Federal Reserve's extensive efforts, in conjunction with the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC"), to solicit and review public comments as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") process to identify and address significant areas of concern related to regulatory burden imposed on depository institutions.

The GAO's report makes two recommendations to the Federal Reserve regarding the EGRPRA process:

1. [D]evelop plans for the Federal Reserve's regulatory analyses describing how it will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process[; and,]

2. [D]evelop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation.

With respect to the GAO's first recommendation regarding plans to conduct and report on quantitative analysis in the EGRPRA process, when feasible, in order to increase transparency and rigor in the EGRPRA review, we agree that transparency and a rigorous review of the banking agencies' regulations are important aspects of the EGRPRA process. Of course, not every regulation lends itself to quantitative analysis, and certain regulations that the Federal Reserve is tasked with administering are required by law, which limits our discretion in their implementation. Notwithstanding these constraints, the Federal Reserve recently has conducted significant quantitative impact analyses in connection with some rule makings,[1] and we plan to continue to improve the quantitative and qualitative impact analysis we do of our regulations.

As you know, the EGRPRA review is conducted through an interagency process that requires the Federal Reserve, FDIC, and the OCC to jointly review their regulations. Consequently, the Federal Reserve plans to coordinate with the FDIC and the OCC to identify opportunities to conduct quantitative analyses, where feasible, during future EGRPRA reviews.

With respect to the GAO's second recommendation regarding identifying opportunities to streamline not only individual regulations but also bodies of regulation, we agree that the cumulative impact of our regulations on depository institutions is worthy of further review. We are mindful of the cumulative burden on depository institutions that all the regulations of the banking agencies may impose. Accordingly, the Federal Reserve plans to coordinate with the FDIC and the OCC to identify further opportunities to seek comment on bodies of regulation and how they could be streamlined.

We appreciate the GAO's review of the Federal Reserve's oversight of community banks, for its professional approach to the review, and for the opportunity to comment.

Sincerely,

Mark Van Der Weide

[1] See, for example, the final rules regarding (1) risk-based capital surcharges for global systemically important bank holding companies (GSIBs), and (2) total loss-absorbing capacity requirements, for GSIBs and U.S. intermediate holding companies of certain foreign banking organizations. 80 Fed. Reg. 49082 (August 14, 2015) and 82 Fed. Reg. 8266 (January 24, 2017), respectively.

Appendix IV: Comments from the Federal Deposit Insurance Corporation

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990
Legal Division

January 19, 2018

Mr. Lawrance L. Evans, Jr., Managing Director
Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Evans:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *COMMUNITY BANKS AND CREDIT UNIONS: Regulators Could Take Additional Steps to Address Compliance Burdens (GAO-18-213)* ("Report"). The Report reviews (1) the regulations community banks and credit unions viewed as most burdensome and why, and (2) the efforts taken by the depository institution regulators to reduce any regulatory burden.

The Report contains two recommendations to assist the FDIC, along with the Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System ("FRB") (together the "agencies"), to further enhance the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") review process. Specifically, the Report recommends that the FDIC, as part of the EGRPRA process, develop:

1. Plans for conducting and reporting quantitative analysis whenever feasible.
2. Plans that would identify opportunities for streamlining bodies of regulation.

We appreciate the two recommendations and will work with the OCC and the FRB to find the most appropriate ways to ensure that we continue to enhance our rulemaking analyses as part of the EGRPRA process. In particular, as the primary federal regulator of the majority of community banks in the United States, we are keenly aware that they are concerned about the burden of complying with regulations.

As noted in the Report, during the latest EGRPRA review process the agencies focused, consistent with the statute, on the significant issues raised by commenters. Comments were provided in writing in response to notices of regulatory review in the *Federal Register* as well as in person at outreach events, which focused on hearing the views of community bank panelists and other local stakeholders. This approach allowed the agencies to prioritize areas that were viewed by commenters as the most burdensome. As a result, the agencies have taken or are in the process of taking key initiatives – identified by commenters – to reduce burden. For example, the agencies (1) proposed increasing the appraisal threshold for commercial real estate transactions, (2) proposed amending the regulatory capital rules, particularly for community banks, and (3) are continuing the process of simplification of call reports, including the introduction of a streamlined call report (thus far removing 40 percent of the data items previously included in the report with about an additional 11 percent of data items expected to be removed effective June 30, 2018) available to the vast majority of community banks. Where possible and appropriate, the agencies gathered additional quantitative data through the notice and comment process to enable more in-depth analysis and review.

It is important to note, however, the difficulty and costs associated with quantifying regulatory costs, as described in Appendix B of the 2012 *FDIC Community Banking Study*. Community bankers interviewed in that study noted that it is difficult to separate regulatory costs from non-regulatory costs and any regulatory requirement for them to specifically identify regulatory costs would be, in itself, "very costly."[1] We note that in this Report the GAO also relied on structured interviews with focus groups of bankers to assess regulatory efforts to reduce existing regulatory burden. Moreover, the two cited studies published by the Credit Union National Association and the Mercatus Center also relied exclusively on non-quantitative survey results in assessing changes in regulatory costs. The choice of methodologies by the GAO and outside researchers cited in this Report reflects the difficulties in precisely quantifying the costs and benefits of specific regulations.

In addition, we note that the aggregate post-crisis performance of community banks has been a recurring area of research and analysis for the FDIC. Our analysis indicates that the post-crisis performance of community banks in terms of profitability and loan growth has been relatively strong in spite of the headwinds associated with relatively slow rates of economic growth and historically low levels of interest rates. This is a reliable and highly relevant measure of the cumulative effects of post-crisis regulatory reform that can help to inform policymakers. These results should not be ignored when assessing the cumulative effects of post-crisis regulation in the context of overall economic conditions.

Going forward, and as part of the EGRPRA review process, the FDIC will continue to monitor the cumulative effects of regulations through, for example, review of the community and quarterly banking studies and community bank call report data. And as noted earlier, we will work with the OCC and FRB to further enhance our EGRPRA processes and analyses where feasible and consistent with the statute.

[1] FDIC Community Banking Study, at B-3, available at: https://www.fdic.gov/regulations/resources/cbi/report/cbsi-b.pdf.

Mr. Lawrance L. Evans, Jr. - 3 - January 19, 2018

Thank you for your efforts and if you have any questions or need additional follow-up information, please do not hesitate to contact us.

Sincerely,

Charles Yi
General Counsel

Appendix V: Comments from the National Credit Union Administration

National Credit Union Administration
Office of the Executive Director

January 16, 2018

SENT BY E-MAIL

Mr. Lawrence L. Evans, Jr.
Managing Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548
evansl@gao.gov

Dear Managing Director Evans:

We reviewed the GAO report, *Community Banks and Credit Unions – Regulators Could Take Additional Steps to Address Compliance Burdens*, which identifies regulations community banks and credit unions view as the most burdensome and discusses what regulators are doing to reduce regulatory burden.

We acknowledge the report's conclusions that, as part of the NCUA's continued voluntary compliance with the EGRPRA process, we should improve our quantitative analysis and develop plans for continued reductions to regulatory burden within the credit union industry. NCUA appointed a regulatory review task force charged with reviewing and developing a four-year plan for revising NCUA's regulations. This review will consider the benefit of our regulations as well as the burden they have on the credit unions we regulate.

Thank you for the opportunity to comment.

Sincerely,

Mark Treichel

Mark Treichel
Executive Director

1775 Duke Street – Alexandria, VA 22314-3428 – 703-518-(Insert Main Office No.)

Appendix VI: Comments from the Office of the Comptroller of the Currency

Office of the Comptroller of the Currency

Washington, DC 20219

February 01, 2018

Mr. Lawrance L. Evans, Jr.
Managing Director, Financial Markets and Community Investment
U. S. Government Accountability Office
Washington, DC 20548

Dear Mr. Evans:

The Office of the Comptroller of the Currency (OCC) has reviewed the Government Accountability Office's (GAO) draft report titled "Community Banks and Credit Unions Regulators Could Take Additional Steps to Address Compliance Burdens." The report examined (1) the regulations community banks and credit unions viewed as most burdensome and why, and (2) efforts by depository institution regulators to reduce any regulatory burden.

As part of this review, the GAO makes two recommendations to the OCC. The GAO recommends that the OCC should, as part of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, develop plans for regulatory analyses describing how the agency will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process. The GAO also recommends that the OCC should, as part of the EGRPRA process, develop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation.

The OCC appreciates the GAO's recommendations and understands their importance. As a result, the OCC will consult and coordinate with the Federal Reserve Board (Board) and the Federal Deposit Insurance Corporation (FDIC) to develop plans for the agencies' regulatory analyses, including how the agencies will conduct and report on quantitative analysis.

We note that the OCC already conducts impact assessments for proposed and final rules. These impact assessments inform the OCC about opportunities to reduce regulatory burden on national banks and Federal savings associations, including community banks. In addition, the OCC will work with the Board and the FDIC to increase the transparency of the EGRPRA process, while also considering the availability of data and legal constraints on the ability to disclose certain information. To supplement the OCC's ongoing efforts to review and streamline regulations while preserving the safety and soundness of the Federal banking system, the OCC will consult with the Board and the FDIC to develop, as part of the EGRPRA process, plans for conducting evaluations for identifying opportunities to decrease regulatory burden created by bodies of regulation.

If you need additional information, please contact Patrick Tierney, Assistant Director, Legislative and Regulatory Activities Division, (202) 649-5490.

Sincerely,

Karen Solomon
Acting Senior Deputy Comptroller and Chief Counsel

2

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Lawrance L. Evans, Jr., (202) 512-8678 or evansl@gao.gov

Staff Acknowledgments

In addition to the contact name above, Cody J. Goebel (Assistant Director); Nancy Eibeck (Analyst in Charge); Bethany Benitez; Kathleen Boggs; Jeremy A. Conley; Pamela R. Davidson; Courtney L. LaFountain; William V. Lamping; Barbara M. Roesmann; and Jena Y. Sinkfield made key contributions to this report.

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Question from Hon. John Curtis to Mr. Michael Clements

Question: Is there a pattern of assigning the new guys to the smaller institutions?

Answer: Federal banking regulators generally assign examiners to examine financial institutions based on various factors including size, geography, risk profile, and complexity of the financial institution. Newer, or less experienced examines are generally assigned to smaller, less complex financial institutions, and may be assigned to examine larger, more complex financial institutions as they obtain additional and specific training and examination experience.

Credit Union National Association
CUNA

Jim Nussle
President & CEO

Phone: 202-508-6745
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601 Pennsylvania Avenue NW
South Building, Suite 600
Washington, D.C. 20004-2601

February 27, 2018

Chairman Chabot
House Small Business Committee
2361 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Velázquez
House Small Business Committee
2069 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Chabot and Ranking Member Velázquez,

On behalf of America's Credit Unions, I am writing regarding today's hearing entitled "How Red Tape Affects Community Banks and Credit Unions: A GAO Report." The Credit Union National Association (CUNA) represents America's credit unions and their 110 million members.
Credit union members depend on safe and affordable financial services provided by their credit unions; unfortunately, the regulatory scheme created by the Dodd-Frank Act has made it more difficult and more expensive to provide these services. The current regulatory scheme favors the largest banks and nonbank financial services providers that can afford to absorb regulatory and compliance changes from thousands of pages of new rules and requirements.

A recent study of the current financial impact on credit unions confirms this trend. The study, "2017 Regulatory Burden Financial Impact Study: An Elevated New Normal," shows that credit union regulatory burden costs have increased to an "elevated new normal," totaling an estimated $6.1 billion in 2016. Overall, costs are up more than $800 million compared with 2014. That is a 15.1 percent increase, which far exceeds the 2.8 percent inflation rate over the two-year period. In total, the credit union regulatory burden costs for 2016 translate to $115 per credit union household.

Congress is considering legislation that would help address credit unions' regulatory burden. This legislation, S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act includes a number of the provisions which would provide much needed relief and give credit union members more access to credit. For example, the bill would allow loans held in portfolio by credit unions and other small financial institutions with less than $10 billion in assets to be considered qualified mortgages for the purposes of the CFPB's Ability-to-Repay rule. This legislation also includes important provisions to address burdens imposed on small credit unions as a result of the qualified mortgage rule and the Home Mortgage Disclosure Act. It also provides important new protections again elder financial abuse. These are all commonsense provisions that will help small financial institutions, like credit unions, manage regulatory burden.

In addition to the regulatory burdens faced by credit unions, recent actions taken by predatory plaintiffs' firms have also harmed their ability to serve consumers. CUNA's member credit unions have recently become the subject of a wave of frivolous litigation alleged under the Americans with Disabilities Act and the Telephone Consumer Protection Act.

Credit unions as smaller financial institutions and member-owned not for profit entities, are particularly at risk when lawyers take advantage of a lack of clarity in the marketplace and engage in frivolous litigation. Many credit unions are small businesses with extremely limited staff and resources and they often serve smaller or rural local communities that may otherwise have limited options for financial services. In the United States, nearly half of all credit unions, 2,708 out of approximately 6,000 credit unions, employ five or fewer full time employees. More than half (3,457) have assets of less than $50 million. Moreover, credit unions with less $20 million in assets account for over 40% of all U.S. credit unions (2,369).

When they are targeted for litigation as a result of unclear guidelines, resources are depleted from the pooled resources of the entire membership. Certain smaller credit unions have considered taking down their entire website or even closing their doors because of these threats. This harms all consumers, who rely on credit unions for safe and affordable products and services.
We appreciate the leadership of the Small Business Committee to highlight the burdens of overregulation and predatory litigation on credit unions and other small businesses. We look forward to working with you on these issues.

On behalf of America's credit unions and their 110 million members, thank you very much for your consideration of our views.

Sincerely,

Jim Nussle
President & CEO

ICBA
INDEPENDENT COMMUNITY BANKERS *of* AMERICA®

February 27, 2018

The Problem of Red Tape: The Community Bank Perspective

On behalf of the nearly 5,700 community banks represented by ICBA, we thank Chairman Chabot, Ranking Member Velazquez, and members of the Small Business Committee for convening today's hearing titled "How Red Tape Affects Community Banks and Credit Unions: A GAO Report." ICBA is pleased to have the opportunity to offer this statement for the hearing record.

We hope that this hearing will highlight the need for enactment of meaningful regulatory relief for community banks before the close of the 115th Congress. As discussed below, S. 2155 presents the best and most realistic opportunity for enacting this relief. We ask the members of this committee to support expeditious consideration of this critical legislation when it is sent over from the Senate.

Community Banks and the American Economy

Community banks are locally operated and often closely held institutions with simple, conservative balance sheets and strong capitalization. Located in urban, suburban and rural areas, they are funded primarily by local deposits and deeply rooted in their communities. Community banks have a vital stake in the success of their local economies because the fortunes of the local bank and the local economy are closely linked.

The economic life of thousands of American communities depends on customized financial products and services that only community banks provide. According to a 2016 report by the Federal Deposit Insurance Corporation (FDIC), more than 20 percent of our nation's 3,100 counties are exclusively served by community banks.[1] Collectively, community banks provide nearly 50 percent of all small business loans in the country and 77 percent of all agricultural loans, according to a study from Harvard's Kennedy School.[2] Community banks are playing a vital

About ICBA
The Independent Community Bankers of America®, the nation's voice for more than 5,800 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 760,000 Americans, hold $4.7 trillion in assets, $3.7 trillion in deposits, and $3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

[1] https://www.fdic.gov/regulations/resources/cbi/conference/cbi-book12-19-16.pdf.
[2] "The State and Fate of Community Banking." Marshall Lux and Robert Greene. Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School. February 2015.

role in ensuring the economic recovery is robust and broad-based, reaching communities of all sizes and in every region of the country.

Overregulation a Critical Challenge for Community Banks

The onerous regulatory burden on community banks is growing both in volume and complexity, suffocating the true potential of community banks to spur economic growth and job creation in their communities and across the nation. These regulations are issued by a spectrum of federal agencies and run the gamut from Bank Secrecy Act to credit card regulation to the multiple code sections that govern mortgage lending and servicing.

Even when a regulation does not apply to a particular bank, that bank must still evaluate each one to determine to what extent its organization is impacted. Every change requires software updates, a lengthy process that includes a risk assessment, installation on a test network, testing, installation on a production network, more testing, procedural review, training and audit. What's more, policy revisions require committee review and Board approval. Compliance changes result in legal and audit expenses and sometimes the expense of printing and mailing new disclosures. But most significant is the drain on staff time. In contrast to larger banks, community banks have limited resources to devote to compliance. They must divert valuable staff from other duties, including serving customers, to implement new rules and other changes, a process that can take weeks or months depending on the complexity of the change and the bank processes impacted.

ICBA's 2014 Community Bank Lending Survey surveyed over 500 community banks nationwide.[3] Seventy-eight percent of respondents reported they had increased the number of staff dedicated to lending compliance in the past five years. In a lightly staffed community bank, any additional hiring is significant. Hiring dedicated to compliance, rather than serving customers, is a deadweight loss that diverts resources from community lending. The survey clearly illustrated the negative impact new rules are having on credit availability and consumer choice.

Consolidation

This increase in regulatory burden has contributed significantly to the rapid pace of consolidation in recent years. Banks need scale to amortize compliance costs. As these costs have grown dramatically in recent years, banks have acquired or merged with other banks to achieve this scale. Today there are 1,700 fewer community banks in the United States than there were in 2010. Regulatory-driven consolidation has particularly reduced the ranks of the smallest community banks. The number of banks with assets below $100 million shrunk by 32 percent, while the

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[3] 2014 ICBA Community Bank Lending Survey. January 2015.

number of banks with assets between $100 million and $1 billion fell by 11 percent.

Of course, consolidation would be less of a concern if there were an influx of de novo charters to replenish lost banks. In the years before the financial crisis, de novo bank formation averaged over 170 per year. Even in the depths of the savings and loan crisis in the 1980s, when 1,800 banks and savings institutions failed, an average of 196 de novo banks and savings institutions were formed annually from 1984 through 1992. In recent years, by contrast, de novo formation has ground to a virtual halt. The current regulatory environment for community banks acts as a strong deterrent to potential de novo applicants.

What are the consequences of consolidation without the creation of de novo charters? More communities are stranded without a dedicated, locally-based community bank to invest in their growth and prosperity. These communities will be challenged in the current economic recovery and in future economic cycles. In addition, there will be less competition in financial services in every American community. Less competition means lower rates paid on deposits, higher rates charged on loans, higher fees, and ultimately an erosion in the quality of service.

There are additional consequences to consolidation that must be considered. A financial system with fewer, larger banks is more vulnerable to the risk of another financial crisis. Consolidation makes the megabanks even larger, securing their implicit too-big-to-fail status, inducing risk taking, and ultimately leading to taxpayer bailouts.
For the sake of our communities and the stability of our financial system, it is imperative that we slow the pace of consolidation and restart the de novo process. There is a direct linkage from regulatory burden to consolidation to consumer harm, too-big-to-fail megabanks and taxpayer bailouts. We must provide regulatory relief for community banks that will break this dangerous cycle. Regulation should be tiered and proportionate to the systemic and consumer risk posed by classes of banks.

Solutions

ICBA is grateful for the dozens of bills passed by the House in the 115th Congress that would alleviate regulatory burden for community banks. The Small Business Committee has played a critical role in promoting these bills by highlighting the problem of regulatory burden for community banks and all small businesses. Members of the committee have sponsored and cosponsored many of these bills, many of which have bipartisan support. The Financial Choice Act (H.R. 10), passed by the House in June 2017, contains some two dozen community bank provisions. We hope that before the close of the 115th Congress meaningful community bank regulatory relief legislation can be signed into law. This will require bicameral and bipartisan agreement.

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

S. 2155 Presents the Best Opportunity to Enact Community Bank Regulatory Relief

ICBA anticipates Senate passage of S. 2155 in the coming weeks with a strong bipartisan vote. S. 2155 contains robust regulatory relief for community banks, including relief from HMDA reporting, short form call reports, deemed qualified mortgage status for mortgages held in portfolio by community banks, a lengthened exam cycle for banks with less than $3 billion in assets, and numerous other provisions that would strengthen economic growth and job creation.

It is clear that S. 2155 owes a great deal to the work of the House. The numerous hearings, markups, and House floor votes on community bank regulatory relief in this Congress and recent Congresses have all contributed to the recent work of the Senate Banking Committee. Regulatory relief is a multi-year effort spanning both sides of the Capitol. With this in mind, ICBA urges the members of this committee and the House to seize this opportunity by quickly taking up S. 2155 following Senate passage without amendments that would split the bipartisan coalition needed to enact this long-awaited regulatory relief for community banks.

Closing

Thank you again for convening this hearing and raising the profile of a critical issue for the American economy. ICBA looks forward to working with this to enact meaningful, comprehensive regulatory relief for community banks.

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National Association of Federally-Insured Credit Unions

February 27, 2018

The Honorable Steve Chabot	The Honorable Nydia Velázquez
Chairman	Ranking Member
Small Business Committee	Small Business Committee
U.S. House of Representatives	U.S. House of Representatives
Washington, D.C. 20515	Washington, D.C. 20515

Re: Today's Hearing: "How Red Tape Affects Community Banks and Credit Unions: A GAO Report"

Dear Chairman Chabot and Ranking Member Velázquez:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today in conjunction with today's hearing examining the United States Government Accountability Office (GAO) report that was released last month. Thank you for holding this hearing and allowing NAFCU to share its views.

The recent GAO report released in January found that regulators' analyses "could undermine the goal of [Regulatory Flexibility Act (RFA)] and limit transparency and public accountability." NAFCU is concerned that the study highlighted that regulators', "analyses lacked key information that the Small Business Administration and Office of Management and Budget recommend, including data sources, methodology and definitions of criteria." We also find it particularly worrisome that during the review of the CFPB's regulatory flexibility analyses it was found that some of their rules did not estimate compliance costs for small entities like credit unions. We appreciate the Committee examining these findings and looking for ways to address these issues. We stand ready to work with you.

Credit unions and their 111 million members strongly support efforts to ensure all federal agencies consider the impact of their rules on small institutions and the economy. We thank the Committee again for holding this important hearing and examining this report and the regulations that are heavily impacting credit unions. If my colleagues or I can be of assistance to you, or if you have any questions regarding this or any other issue, please feel free to contact myself or NAFCU's Associate Director of Legislative Affairs, Allyson Browning, at (703)-842-2836 or abrowning@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Committee on Small Business