FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. FFIEC–2017–0001]

Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: Pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the Federal Financial Institutions Examination Council (FFIEC) is publishing a report entitled ''Joint Report to Congress, March 2017, Economic Growth and Regulatory Paperwork Reduction Act'' prepared by four of its constituent agencies: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Association (NCUA).

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NCUA: Ross Kendall, Special Counsel to the General Counsel, (703) 518–6562, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: EGRPRA requires the FFIEC, Board, OCC, and FDIC (the Agencies) to conduct a decennial review of their regulations, using notice and comment procedures, to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. 12 U.S.C. 3311(a)–(c). EGRPRA also requires the FFIEC or the appropriate agency to publish in the **Federal Register** a summary of comments that identifies the significant issues raised and comments on these issues, and to eliminate unnecessary regulations to the extent that such action is appropriate. 12 U.S.C. 3311(d). Furthermore, the FFIEC must submit a report to Congress that includes a summary of the significant issues raised by public comments and the relative merits of these issues, and an analysis of whether the appropriate agency is able to address the regulatory burdens associated with these issues by regulation or whether the burdens must be addressed by legislative action. 12 U.S.C. 3311(e).

The FFIEC and the Agencies have completed their second EGRPRA review and comment process, and the FFIEC submitted the required report to Congress on March 21, 2017. The text of this report, entitled ''Joint Report to Congress, March 2017, Economic Growth and Regulatory Paperwork Reduction Act,'' is set forth below and as published herein fulfills the EGRPRA **Federal Register** publication requirement.

The NCUA is not required to participate in the EGRPRA review process. However, the NCUA elected to conduct its own parallel review of its regulations pursuant to the goals of EGRPRA. NCUA's separate report is included as Part II of the Joint Report to Congress.

Federal Financial Institutions Examination Council

Joint Report to Congress

Economic Growth and Regulatory Paperwork Reduction Act

March 2017

Board of Governors of the Federal Reserve System

Office of the Comptroller of the Currency

Federal Deposit Insurance Corporation

National Credit Union Association

Preface

by Daniel K. Tarullo, Governor, Board of Governors of the Federal Reserve System

As chairman of the Federal Financial Institutions Examination Council (FFIEC), I am pleased to submit this report of the second Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review to Congress. Under EGRPRA, the FFIEC and its member agencies [1] are directed to conduct a joint review of our regulations every 10 years and consider whether any of those regulations are outdated, unnecessary, or unduly burdensome.

This cycle's EGRPRA review commenced in the summer of 2014, with the FFIEC agencies publishing the first of four **Federal Register** notices through which we solicited formal, written comments on our regulations. In addition, we hosted six outreach sessions across the country, including one in Kansas City, Missouri, that focused on rural banks, in which representatives from banks, community and consumer groups, and other interested parties participated. Principals of all the agencies participated in these sessions. As I noted at one of these meetings, the federal banking agencies' underlying aim with these efforts was to make this EGRPRA review as productive as possible and not a formalistic bureaucratic exercise.

In response to over 230 written comments and 120 oral comments received through this review, the FFIEC agencies have developed the attached report, which summarizes comments received, the major issues raised therein, and the agencies' responses to each of those issues. Most importantly, the report sets forth the initiatives the agencies have or will be undertaking to reduce regulatory burden while still promoting the safety and soundness of insured depository institutions and promoting consumer protection. Of note, the regulations governing capital, regulatory reporting, real estate appraisals, and examination frequency are the principal areas identified for modifications to achieve meaningful burden reduction. In some of these areas, the FFIEC agencies have either already made the changes or are in the process of doing so. In the other areas, the agencies expect to propose changes to our regulations in the near term to provide this relief.

I appreciate the participation and collaboration of the staffs of the federal banking agencies in bringing about this comprehensive report. The FFIEC agencies look forward to continuing to work with our regulated institutions, Congress, and the public more generally to fully realize the recommendations made herein.

I. Joint Agency Report

A. Introduction

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) [2] requires that, not less than once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively the Board, OCC, and FDIC are referred to as the federal banking agencies or agencies) [3] conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions (IDIs). In conducting this review, the statute requires the FFIEC or the agencies to categorize their regulations by type and, at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome.[4]

EGRPRA also requires the FFIEC or the agencies to publish in the **Federal Register** a summary of the comments received that identifies the significant issues raised by commenters and that provides agency comment on these issues. It also directs the agencies to eliminate unnecessary regulations to the extent that such action is appropriate. Finally, the statute requires the FFIEC to submit to Congress a report that summarizes any significant issues raised in the public comments and the relative merits of such issues. The report must include an analysis of whether the agencies are able to address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

The agencies completed the first review required by EGRPRA in 2007.[5] This report contains the results of the agencies' second EGRPRA review. Specifically, this report describes the EGRPRA review process; summarizes the public comments received; identifies and notes the merits of the significant issues raised by the comments; and describes the agencies' response to these comments. This report also includes the agencies' recommendations for legislative changes. The State Liaison Committee

[1] The National Credit Union Administration, although an FFIEC member, is not a ''federal banking agency'' within the meaning of EGRPRA and so is not required to participate in the review process. Nevertheless, NCUA elected to participate in the EGRPRA review and conducted its own parallel review of its regulations. NCUA's separate report is included as Part II of this report. The CFPB, although an FFIEC member, is not a ''federal banking agency'' within the meaning of EGRPRA and so is not required to participate in the review process. The CFPB is required (in a process separate from the EGRPRA process) to review its significant rules and publish a report of its review no later than five years after they take effect. See 12 U.S.C. 5512(d).

[2] EGRPRA, Pub. L. 104–208 (1996) (codified at 12 U.S.C. 3311).

[3] The FFIEC is an interagency body comprised of the OCC, Board, FDIC, National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB), and State Liaison Committee. Of these, only the federal banking agencies are statutorily required to undertake the EGRPRA review. The CFPB is required to review its significant rules and publish a report of its review no later than five years after the rules take effect. See 12 U.S.C. 5512(d). This process is separate from the EGRPRA process. The NCUA has voluntarily conducted its own review of its regulations concurrently with the timing of the agencies' review. The results of its review are included in part II of this report. The FFIEC does not issue regulations that impose burden on financial institutions and therefore its regulations are not included in this EGRPRA review.

[4] Other federal agencies also impose regulatory requirements on IDIs. However, these regulations are not subject to the EGRPRA process. Examples include rules issued by the CFPB under the federal consumer financial laws, and anti–money laundering regulations issued by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). During the EGRPRA review process, when the agencies received a comment about a regulation issued by the CFPB, FinCEN, or another federal regulator, the agencies provided the comment to the other agency.

[5] 72 FR 62036 (November 1, 2007).

provided the agencies with its suggestions on the EGRPRA review, which are included in the report in appendix 1. The agencies worked with the State Liaison Committee during the review and will continue to coordinate with the committee on the suggestions presented.

As noted previously, the NCUA is not required to participate in the EGRPRA review but elected to review its regulations pursuant to the goals of EGRPRA during the first EGRPRA review 10 years ago. The NCUA again has elected to review its regulations concurrently with the agencies, and participated in the agencies' EGRPRA planning and comment solicitation process. Because of the unique circumstances of federally insured credit unions and their members, however, the NCUA established its own regulatory categories and published its own notices and requests for comments on its rules separately from the agencies. The NCUA's notices were consistent and compatible with those published by the agencies, and the NCUA published its notices during the same time period as the agencies. Similar to the requirements of EGRPRA, the NCUA invited public comment on any aspect of its regulations that are outdated, unnecessary, or unduly burdensome. As in the prior EGRPRA review, the NCUA's report is contained in part II of this report to Congress.

B. Highlights of Interagency and Agency Actions to Reduce Burden

During the EGRPRA review, the agencies have made meaningful efforts to address the issues raised by EGRPRA commenters to reduce regulatory burden, especially on community banks, while at the same time ensuring that the financial system remains safe and sound. The agencies' responses to these issues are described in detail in section D of this report. Highlights include the following:

• ***Simplifying the capital rules.*** With the goal of meaningfully reducing regulatory burden on community banking organizations while at the same time maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system, the agencies are developing a proposal to simplify the generally applicable framework. Such amendments likely would include (1) replacing the framework's complex treatment of high volatility commercial real estate (HVCRE) exposures with a more straightforward treatment for most acquisition, development, or construction (ADC) loans; (2) simplifying the current regulatory capital treatment for mortgage servicing assets (MSAs), timing difference deferred tax assets (DTAs), and holdings of regulatory capital instruments issued by financial institutions; and (3) simplifying the current limitations on minority interests in regulatory capital. The agencies would seek industry comment on these amendments through the normal notice and comment process.

• ***Reduced regulatory reporting requirements with the introduction of a community bank Call Report.*** The agencies proposed for comment in August 2016, and in December 2016 finalized, a new, streamlined FFIEC 051 Call Report for institutions with domestic offices only and less than $1 billion in total assets. The FFIEC 051 was created from the existing FFIEC 041 report for all institutions with domestic offices only by removing certain existing schedules and data items that have been replaced by a limited number of data items collected in a new supplemental schedule, eliminating certain other existing data items, and reducing the reporting frequency of certain data items. This new Call Report, which will take effect March 31, 2017, will reduce the length of the Call Report from 85 pages to 61 pages and will remove approximately 40 percent of the data items currently included in the FFIEC 041.

• ***Simplified the Call Report.*** In July 2016, the agencies finalized certain Call Report revisions, which included a number of burden-reducing and other reporting changes. Following Office of Management and Budget (OMB) approval, some of the Call Report revisions took effect September 30, 2016, and others will take effect March 31, 2017. The agencies' August 2016 proposal that was finalized in December 2016 includes further burden-reducing changes to the two existing versions of the Call Report. Further Call Report streamlining is anticipated in future proposals. In particular, any future simplification of capital rules may significantly reduce the difficulty of completing the Call Report's capital schedule, which was viewed as particularly burdensome by commenters.

• ***Raising appraisal threshold for commercial real estate loans.*** The agencies are developing a proposal to increase the threshold for requiring an appraisal on commercial real estate loans from $250,000 to $400,000, in order to reduce regulatory burden in a manner consistent with safety and soundness.

• ***Addressing appraiser shortages in rural areas.*** Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) allows the Appraisal Subcommittee of the FFIEC (ASC) after making certain findings and with the approval of the FFIEC, to grant temporary waivers of any requirement relating to certification or licensing of a person to perform appraisals under Title XI. Furthermore, state appraiser certifying or licensing agencies may recognize, on a temporary basis, the certification or license of an appraiser issued by another state. The agencies intend to issue a statement to regulated entities informing them of the availability of both temporary waivers and temporary practice permits, which are applicable to both commercial and residential appraisals, and may address temporary appraiser shortages. Additionally, the agencies will work with the ASC to streamline the process for the evaluation of temporary waiver requests.

• ***Clarified use of evaluations versus appraisals.*** To clarify current supervisory expectations regarding evaluations, particularly in response to commenters in rural areas, in March 2016 the agencies issued an interagency advisory on when evaluations can be performed in lieu of appraisals, including when transactions fall below the dollar thresholds set forth in the appraisal regulations.

• ***Reduced the full scope, on-site examination (safety-and-soundness examination) frequency for certain qualifying institutions.*** The agencies indicated support for revisions to the statute regarding examination frequency. Congress subsequently enacted the Fixing America's Surface Transportation Act (FAST Act) that, among other things, gave the agencies discretion to raise the asset threshold for certain IDIs qualifying for an 18-month examination cycle with an ''outstanding'' or ''good'' composite condition from less than $500 million in total assets to less than $1 billion in total assets. Shortly thereafter, the agencies exercised this discretion and issued a joint interim final rule to raise the asset threshold that, in general, makes qualifying IDIs with less than $1 billion in total assets eligible for an 18-month (rather than a 12-month) examination cycle. As a result, approximately 611 more institutions would potentially qualify for an extended 18-month examination cycle, increasing the number of potentially qualifying institutions to approximately 83 percent of IDIs.

• ***Reduced frequency of Bank Secrecy Act (BSA) reviews for certain qualifying institutions.*** In general, agency review of BSA compliance programs are typically conducted during safety and soundness examinations. Therefore, institutions with assets between $500 million and $1 billion that are now eligible for safety-and-soundness examinations every 18 months will also generally be subject to less frequent BSA reviews.

• ***Referred Bank Secrecy Act (BSA) and anti-money laundering (AML) comments.*** As was noted in the first EGRPRA report to Congress in 2007, the agencies do not have exclusive authority over the threshold filing requirements for Suspicious Activity Reports (SARs) and have no authority over the threshold filing requirements for Currency Transaction Reports (CTRs). The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, is the delegated administrator of the BSA that issues regulations and interpretive guidance, and as such, any changes to the SAR or CTR requirements would require a change in FinCEN's regulations. The agencies provided FinCEN with the comments received during the EGRPRA review and FinCEN provided a response, which is attached to the report in appendix 5. In addition, the agencies have established common training policies for examiners, maintain an interagency examination manual, and issued an interagency statement setting forth the policy for enforcing specific AML requirements for greater consistency in enforcement decisions on BSA matters through publication of the FFIEC BSA/AML Examination Manual.

• ***Clarifying guidance regarding flood insurance.*** The agencies are updating and revising their Interagency Questions and Answers Regarding Flood Insurance (Interagency Flood Q&As) to provide additional guidance on a number of issues raised by EGRPRA commenters, including the escrow of flood insurance premiums, force-placed insurance, and detached structures.

• ***Increasing the major assets interlock threshold.*** The agencies anticipate issuing a proposal for comment to amend their rules implementing the Depository Institution Management Interlocks Act (DIMIA) to increase the asset thresholds in the major assets prohibition, currently set at $2.5 billion and $1.5 billion, based on inflation or market changes.

• ***Increasing further guidance on Regulation O.*** The agencies are working to provide a chart or similar guide on the statutorily required rules and limits on extensions of credit made by an IDI to an executive officer, director, or principal shareholder of that IDI, its holding company, or its subsidiary.

The agencies are aware that regulatory burden does not emanate only from statutes and regulations, but often comes from processes and procedures related to examinations and supervisory oversight. As detailed in this report, the agencies have taken a number of actions to improve the efficiency and minimize unnecessary burdens of these activities. The agencies plan to continue these efforts by jointly reviewing the examination process, examination report format, and examination report preparation process to identify further opportunities to minimize burden to bank management where possible, principally by rethinking traditional processes and making better use of technology. In addition, the agencies plan to review interagency guidance, such as policy statements, to update and streamline guidance.

In addition to interagency actions, the agencies have engaged in individual efforts to reduce burden and update regulations and processes, including, among other things, the following actions:

Board

• ***Amended the Small Bank Holding Company (BHC)/Savings and Loan Holding Company (SLHC) Policy Statement.*** In April 2015, the Board approved a final rule that raised the asset threshold of the Small BHC Policy Statement from less than $500 million in total consolidated assets to less than $1 billion in total consolidated assets and expanded the application of the policy statement to SLHCs. As of issuance of the final rule, 89 percent of all BHCs and 81 percent of all savings and loan holding companies were covered by the policy statement and were excluded from certain consolidated capital requirements.

• ***Modernized initiatives related to safety-and-soundness supervisory process.*** The Board has taken several actions to reduce burden and to advance a more efficient and effective supervisory program. For instance:

—The Board expanded its offsite loan review program for banking organizations with less than $50 billion in total assets across the Federal Reserve System.

—The Board issued a supervisory letter reinforcing its practice of relying on the assessments of the primary regulator of a depository institution when supervising bank holding companies and savings and loan holding companies with total consolidated assets of less than $50 billion.

—The Board updated and issued supervisory guidance for assessing risk management at institutions with less than $50 billion in total consolidated assets, which provides clarification on, and distinguishes supervisory expectations for, the roles and responsibilities of the board of directors and senior management for an institution's risk management.

—The Board revised its rule regarding company-run stress testing for bank holding companies with total consolidated assets of between $10 and $50 billion to provide greater flexibility with respect to required assumptions that must be included in company-run stress tests. This revision allows these covered companies to incorporate their own capital action assumptions into their Dodd-Frank Act required company-run stress tests.

—The Board, the FDIC, and the state banking agencies (coordinated through the Conference of State Bank Supervisors) collaborated to develop an information technology (IT) risk-focused examination program (referred to as InTREx). This examination program provides supervisory staff with risk-focused and efficient examination procedures for conducting IT reviews and assessing IT and cybersecurity risks at supervised institutions. Further, under the InTREx program, comprehensive IT examinations are conducted at institutions that present the highest IT risks and more targeted IT examinations are conducted at institutions with lower IT risks.

• ***Reviewed supervisory policy.*** The Board periodically reviews its existing supervisory guidance to evaluate its relevance and effectiveness. The Board completed a policy review of the supervision programs for community and regional banking organizations to make sure that these programs and related supervisory guidance appropriately align with current banking practices and risks. As a result of this review, the Board eliminated 78 guidance letters that are no longer relevant.

• ***Revised consumer compliance examination practices.*** The Board revised its consumer compliance examination frequency policy in January 2014 to lengthen the time frame between on-site consumer compliance and Community Reinvestment Act (CRA) examinations for many community banks with less than $1 billion in total consolidated assets. The Board adopted a new consumer compliance examination framework for community banks at the same time. The new framework more explicitly bases examination intensity on the individual community bank's risk profile, weighed against the effectiveness of the bank's compliance controls.

• ***Launched an electronic applications filing system.*** The Board launched its electronic applications filing system (E-Apps) in 2010 to allow state member banks, bank and savings and loan holding companies, and their representatives, to file applications and notices online eliminating the time and expenses of printing, copying, and mailing documents.

• ***Invited communications and outreach with the industry.*** The Board continues to make special efforts to explain when its requirements are applicable to community banks. For instance, the Board provides a statement at the top of each Supervision and Regulation letter and each Consumer Affairs letter that clearly indicates which banking entity types are subject to the guidance. The Board also has initiated numerous industry outreach opportunities to provide resources on key supervisory policies, including the development of two programs—''Outlook Live'' and ''Ask the Fed''—as well as the publication of three newsletters—*Community Banking Connections, Consumer Compliance Outlook*, and *FedLinks*. Additionally, the Federal Reserve co-sponsors an annual community banking research and policy conference, ''Community Banking in the 21st Century,'' along with the Conference of State Bank Supervisors, to inform our understanding of the role of community banks in the U.S. economy and the effects that regulatory initiatives may have on these banks.

OCC

• ***Issued two final rules to implement EGRPRA comments and make other regulatory burden reducing changes.*** The OCC has issued two final rules amending OCC regulations based on suggestions made by EGRPRA commenters with respect to licensing transactions, electronic activities, the electronic submission of securities-related filings; and collective investment funds. These final rules also make a number of other changes that reduce regulatory burden and update regulatory requirements specifically with respect to business combinations; changes to permanent capital; bank directors; fidelity bonds; securities recordkeeping and confirmation; securities offering disclosures; and reporting, accounting, and management policies. The OCC plans to propose additional regulatory amendments in one or more future rulemakings, or to revise licensing guidance, to address other EGRPRA comments related to financial subsidiaries, fiduciary activities, and employment contracts between a federal savings association (FSA) and its officers or other employees.

• ***Reduced regulatory burden and updated regulatory requirements by integrating OCC national bank and FSA rules.*** The OCC is continuing to integrate its rules for national banks and FSAs into a single set of rules, where possible. The key objectives of this integration process are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and FSAs.

• ***Reduced burden in the OCC examination and supervisory process.*** The OCC has modified its examination process in response to comments received from bankers at EGRPRA and other outreach meetings, specifically by tailoring its Examination Request Letter to the institution being examined to remove redundant or unnecessary information requests, improving the planning of on-site and off-site examination work and incorporating examination process efficiencies in individual bank supervisory strategies, and leveraging technology to make the examination process more efficient and less burdensome.

• ***Updating supervisory guidance.*** The OCC is in the process of reviewing and updating its supervisory and examiner guidance to align it to current practices and risks and to eliminate unnecessary or outdated guidance. Since 2014, the OCC has eliminated approximately 125 outdated or duplicative OCC guidance documents and updated and/or revised approximately 22 OCC guidance documents.

• ***Issued guidance on reducing burden through collaboration.*** The OCC has encouraged the collaboration and pooling of resources among community banks as one way to reduce regulatory burden, and provided guidance on this approach in January 2015 in a paper entitled *An Opportunity for Community Banks: Working Together Collaboratively*. Collaborative efforts could include alliances to bid on larger loan projects; pooling resources to finance community development activities; and collaborating on accounting, clerical support, data processing, employee benefit planning, and health insurance. The OCC is committed to encouraging such collaboration to the extent consistent with applicable law and safety and soundness.

• ***Established Office of Innovation to assist community banks in Fintech environment.*** The OCC developed its financial innovation initiative, launched in 2015, to provide federally chartered institutions, in particular community banks, with a regulatory framework that is receptive to responsible innovation and supervision that supports it. As part of this initiative, the OCC established an Office of Innovation where community banks can have an open and candid dialogue apart from the supervision process on innovation and emerging developments in the industry. When fully operational in 2017, the Office of Innovation will provide value to community banks through outreach and technical assistance to help community banks work through innovation-related issues and understand regulatory concerns.

• ***Issued risk reevaluation guidance.*** On October 5, 2016, the OCC issued guidance that describes corporate governance best practices for banks' consideration when conducting their periodic evaluations of risk and making account retention or termination decisions relating to foreign correspondent accounts. This guidance is intended to promote efficiency as it communicates best practices observed by the OCC to aid all OCC-supervised banks in developing practices suitable for conducting risk reevaluations of their foreign correspondent accounts.

• ***Clarified the supervision and examination of mutual FSAs.*** The OCC issued OCC Bulletin 2014–35, ''Mutual Federal Savings Associations: Characteristics and Supervisory Considerations,'' in July 2014 to clarify risk assessments and corporate governance expectations for both OCC examiners and mutual FSAs. Specifically, the guidance describes the unique characteristics of mutual FSAs and the considerations the OCC factors into its risk-based supervision process.

• ***Issued regulatory capital guidance.*** The OCC has published a number of guidance documents to assist banks in their capital planning efforts, such as OCC Bulletin 2012–16, ''Capital Planning: Guidance for Evaluating Capital Planning and Adequacy,'' and the *New Capital Rule Quick Reference Guide for Community Banks.* This latter document is a high-level summary of the aspects of the new rule that are generally relevant for smaller, non-complex banks that are not subject to the market risk rule or the advanced approaches capital rule.

• ***Issued guidance on community banking.*** The OCC published *A Common Sense Approach to Community Banking*, which shares fundamental banking best practices that the OCC has found to prove useful to boards of directors and management in successfully guiding their community banks through economic cycles and environmental changes.

• ***Issued guidance for national bank and FSA directors.*** The OCC published The Director's Book: Role of Directors for National Banks and Federal Savings Associations, which, in general, outlines the responsibilities and role of national bank and FSA directors and management, explains basic concepts and standards for safe and sound operation of national banks and FSAs, and delineates laws and regulations that apply to national banks and FSAs.

• ***Clarified applicability of OCC issuances to community banks.*** The OCC has added a ''Note for Community Banks'' box to all OCC bulletins that explains if and how the new guidance or rulemaking applies to them.

• ***Increased electronic filing of applications, notices, and reports.*** The OCC currently permits the electronic filing of many of its required forms and reports though *BankNet,* the OCC's secure website for communicating with and receiving information from national banks and FSAs. As indicated above, the OCC's EGRPRA final rule permits national banks and FSAs to file various securities-related filings electronically through *BankNet.* Furthermore, the OCC has developed a web-based system for submitting and processing licensing and public welfare investment filings called the Central Application Tracking System (CATS). Beginning in January 2017, the OCC began a phased rollout of CATS to enable authorized national bank and FSA employees to draft, submit, and track filings, and to allow OCC analysts to receive, process, and manage those filings.

• ***Continued support for community national banks and FSAs.*** The OCC continues to provide support for community banks though its online *BankNet* portal. Among other things, *BankNet* contains a ''Director Resource Center,'' which collects information on OCC supervision most pertinent to national bank and FSA directors, and includes a ''Directors Toolkit'' for further assistance in carrying out the responsibilities of a national bank or FSA director. Furthermore, *BankNet* contains a question and answer forum designed to facilitate communication between OCC-regulated institutions and the OCC that provides direct access to OCC Washington, DC, staff and senior management for answers to general bank regulatory and supervisory questions.

FDIC

• ***Reduced supervisory burden on de novo institutions, clarified guidance, and conducted outreach regarding deposit insurance applications.***

—Rescinded FIL–50–2009, ''Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Institutions,'' reducing from seven years to three years the period of enhanced supervisory monitoring of newly insured depository institutions.

—Issued guidance in the form of questions and answers on issues related to deposit insurance applications, clarifying the purpose and benefits of pre-filing meetings, processing timelines, initial capitalization requirements, and business plan requirements.

—Conducted three outreach meetings with more than 100 industry participants, providing guidance about the deposit insurance application process.

—Designated subject matter experts in each of the FDIC's six regional offices, providing applicants with dedicated points of contact for deposit insurance applications.

—Issued for public comment a handbook for organizers of *de novo* institutions, describing the process of applying for federal deposit insurance and providing instruction about the application materials required.

• ***Reduced the frequency of consumer compliance and CRA examinations for small and de novo banks.***

—In November 2013, the FDIC revised its frequency schedule for small banks (those with assets of $250 million or less) that are rated favorably for compliance and have at least a Satisfactory rating under the CRA. Previously, small banks that received a Satisfactory or Outstanding rating for CRA were subject to a CRA examination no more than once every 48 to 60 months, respectively. Under the new schedule, small banks with favorable compliance ratings and Satisfactory CRA ratings are examined every 60 to 72 months for joint compliance and CRA examinations and every 30 to 36 months for compliance only examinations. This revised schedule has reduced the frequency of onsite examinations for community banks with satisfactory ratings.

—In April 2016, the examination frequency for the compliance and CRA examinations of *de novo* institutions and charter conversions was changed. As a result of the FDIC's supervisory focus on consumer harm and forward-looking supervision, the *de novo* period, which had required annual on-site presence for a period of five years was reduced to three years.

• ***Reduced burden in application, examination, and supervisory processes.***

—Implemented an electronic pre-examination planning tool for both risk management and compliance examinations that allows request lists to be tailored to ensure that only those items that are necessary for the examination process are requested from each institution. Tailoring pre-examination request lists minimizes burden for institutions, and receiving pertinent information in advance of the examination allows examiners to review certain materials off site, reducing on-site examination hours.

—Implemented a secure, transactions-based website, known as FDIC*connect*, to provide alternatives for paper-based processes and allow for the submission of various applications, notices, and filings required by regulation. There are 5,977 institutions registered to use FDIC*connect*, which ensures timely and secure access for bankers and supervisory staff, including state supervisors. Twenty-seven business transactions have been made available through FDIC*connect*.

—In 2016, and in response to EGRPRA commenters, established a process to allow for electronic submission of audit reports required by part 363 of the FDIC Rules and Regulations via FDIC*connect*, eliminating the need for institutions to mail hard copies.

—Eliminated requirements for institutions to file applications under part 362 of the FDIC Rules and Regulations to conduct activities permissible for national banks through certain bank subsidiaries organized as limited liability companies. The FDIC estimates the vast majority of the over 2,000 part 362 applications processed over the 10 years before the streamlined procedures were adopted involved limited liability companies, the changes result in a significant reduction in filing requirements.

—Enhanced information technology (IT) examination procedures to require less pre-examination information

from bankers, incorporate cybersecurity principles, and align the examination work program with the Uniform Rating System for Information Technology (URSIT). The revised IT Officer's Questionnaire that is completed by bankers in advance of the examination has 65 percent fewer questions than previous versions, reducing the amount of time needed to prepare for an examination. The new work program has been made publicly available to bankers, and component URSIT ratings will be shared in reports of examination to improve transparency of the examination process and findings.
—Piloted an automated process with certain Technology Service Providers to obtain standardized downloads of imaged bank loan files to facilitate offsite loan review, thereby reducing the amount of examiner time in financial institutions.

• ***Rescinded outdated and redundant rules and guidance.***

—Rescinded 16 rules that were transferred from the Office of Thrift Supervision (OTS) and issued a proposal to rescind another OTS rule, eliminating duplicative rulemakings and updating related FDIC rules as appropriate. Updated FDIC rulemakings by clarifying and aligning the definition of ''control'' to that used by the other federal banking agencies and increasing the threshold for required reporting of certain securities transactions. An additional 14 OTS rules are under review for potential rescission.
—Reviewed internal examiner guidance documents and identified nearly half to be no longer needed. The FDIC is in the process of eliminating the outdated guidance as well as updating remaining examiner guidance.

• ***Provided support to community banks under the multi-year Community Banking Initiative.***

—Established the FDIC Advisory Committee on Community Banking to provide the FDIC with advice and guidance on a broad range of important policy issues impacting community banks throughout the country, as well as the local communities they serve, with a focus on rural areas.
—Established a Directors' Resource Center on the FDIC's website, which among other things, contains more than 25 technical assistance videos designed for bank directors and management on important and complex topics.
—Revised banker guidance on deposit insurance coverage and conducted related outreach sessions for bankers.
—Pursued an agenda of research and outreach focused on community banking issues, including the FDIC Community Bank Study, a data-driven analysis of the opportunities and challenges facing community banks over a 25-year period, as well as research regarding the factors that have driven industry consolidation over the past 30 years, minority depository institutions, branching trends, closely held banks, efficiencies and economies of scale, earnings performance, and rural depopulation.
—Introduced a Community Bank Performance section of the FDIC *Quarterly Banking Profile* to provide a detailed statistical picture of the community banking sector that can be accessed by analysts, other regulators, and bankers themselves.
—Developed and distributed to all FDIC-supervised institutions a *Community Bank Resource Kit*, containing a copy of the FDIC's *Pocket Guide for Directors*, reprints of various *Supervisory Insights* articles relating to corporate governance, interest rate risk, and cybersecurity; two cybersecurity brochures that banks may reprint and share with their customers to enhance cybersecurity savvy; a copy of the FDIC's *Cyber Challenge* exercise; and several pamphlets that provide information about the FDIC resources available to bank management and board members.

• ***Improved communication with bank boards of directors and management***

—Reissued and updated guidance entitled ''*Reminder on FDIC Examination Findings*'' to re-emphasize the importance of open communications regarding supervisory findings and to provide an additional informal review process at the Division Director level for banker concerns that are not eligible for another review process.
—Improved transparency regarding developing guidance and supervisory recommendations by issuing two statements by the FDIC Board of Directors that set forth basic principles to guide FDIC staff in (1) developing and reviewing supervisory guidance and (2) communicating supervisory recommendations to financial institutions under its supervision.
—Proposed revised guidelines for supervisory appeals to provide more transparency and access to the appeals process.

• ***Clarified capital rules and provided related technical assistance.***

—Issued FIL 40–2014 to FDIC-supervised institutions, clarifying how the FDIC would treat certain requests from S-corporation institutions to pay dividends to their shareholders to cover taxes on their pass-through share of bank earnings when those dividends are otherwise not permitted under the new capital rules. The FDIC told banks that unless there were significant safety-and-soundness issues, the FDIC would generally approve those requests for well-rated banks.
—Conducted outreach and technical assistance designed specifically for community banks that included publishing a community bank guide for the implementation of the Basel III capital rules; releasing an informational video on the revised capital rules; and conducting face-to-face informational sessions with community bankers in each of the FDIC's six supervisory regions to discuss the revised capital rules.

• ***Enhanced awareness of emerging cybersecurity threats.***

—Conducted cybersecurity awareness outreach sessions in each of the FDIC's six regional offices and hosted a webinar to share answers to the most commonly asked questions.
—Developed cybersecurity awareness technical assistance videos to assist bank directors with understanding cybersecurity risks and related risk-management programs, and to elevate cybersecurity discussions from the server room to the board room.
—Developed and distributed to FDIC-supervised financial institutions *Cyber Challenge*, a program designed to help financial institution management and staffs discuss events that may present operational risks and consider ways to mitigate them.

C. Overview of the Agencies' Second EGRPRA Review Process

Consistent with EGRPRA, the agencies grouped their regulations into the following 12 regulatory categories: (1) Applications and Reporting; (2) Banking Operations; (3) Capital; (4) CRA; (5) Consumer Protection;[6] (6)

[6] As previously noted, the agencies sought comment only on those consumer protection regulations for which the agencies retain rulemaking authority for IDIs and regulated holding companies following passage of section 1061 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111–203 (2010) (codified at 12 U.S.C. 5581(b)).

Directors, Officers and Employees; (7) International Operations; (8) Money Laundering; (9) Powers and Activities; (10) Rules of Procedure; (11) Safety and Soundness; and (12) Securities.[7] To determine these categories, the agencies divided the regulations by type and sought to have no category be too large or broad.

To carry out the EGRPRA review, the agencies published four **Federal Register** notices, each addressing three categories of rules and each providing a 90-day comment period. On June 4, 2014, the agencies published the first notice, seeking comment on rules in the categories of Applications and Reporting, Powers and Activities, and International Operations.[8] On February 13, 2015, the agencies published the second notice, seeking comment on rules in the categories of Banking Operations, Capital, and the CRA.[9] On June 5, 2015, the agencies published the third notice, seeking comment on rules in the categories of Consumer Protection, Directors, Officers and Employees, and Money Laundering.[10] The agencies note that they announced in this third notice their decision to expand the scope of the EGRPRA review to include recently issued rules, such as those issued pursuant to the Dodd-Frank Act and the recently promulgated domestic capital and liquidity rules. The agencies identified these rules, referred to as ''Newly Listed Rules,'' on a chart included in the third notice.

On December 23, 2015, the agencies published the fourth and final **Federal Register** notice, seeking comment on rules in the categories of Rules of Procedure, Safety and Soundness, and Securities. This final notice also requested comment on the Newly Listed Rules as well as on any other rule issued in final form on or before December 31, 2015, not previously included in one of the 12 categories [11] (see appendix 3 for the complete text of the agencies' four notices requesting public comment on the agencies' rules, as sent to the **Federal Register**).

Throughout the EGRPRA review process, the agencies invited comment on any of the agencies' rules included in this EGRPRA review during any open comment period.

In addition to seeking public comment through the **Federal Register** notices, the agencies held six public outreach meetings across the country to provide an opportunity for bankers, consumer and community groups, and other interested persons to present their views directly to agency senior management and staff on any of the regulations subject to EGRPRA review. The agencies held outreach meetings in Los Angeles, California, on December 2, 2014; Dallas, Texas, on February 4, 2015; Boston, Massachusetts, on May 4, 2015; Kansas City, Missouri, on August 4, 2015 (focusing on rural banking issues); Chicago, Illinois, on October 19, 2015; and Washington, DC, on December 2, 2015.[12] Each outreach meeting consisted of panels of bankers and consumer and community groups who presented their views on the agencies' regulations. These meetings were open to the public and provided all attendees, including those in the audience, with the opportunity to present their views on any of the regulations under review. Furthermore, these meetings were livestreamed via a public webcast in order to increase education and outreach. At the Kansas City, Chicago, and Washington, DC, meetings, online viewers were able to submit real-time, electronic comments to the agencies. Reflective of the importance of the EGRPRA process to the agencies, principals or senior management from each agency attended each of the outreach meetings (see appendix 4 for the text of the agencies' notices announcing the EGRPRA outreach meetings, as sent to the **Federal Register**).

To provide the public with information about the EGRPRA process, the agencies established a dedicated website, *http://egrpra.ffiec.gov*. Among other things, this website contains links to all of the **Federal Register** notices, transcripts and videos of each of the outreach meetings, and links to all of the public comments received. The public also could submit comments on the agencies' regulations directly through this website.

The agencies received over 230 comment letters from IDIs, trade associations, consumer and community groups, and other interested parties directly in response to the **Federal Register** notices. The agencies also received numerous oral and written comments from panelists and the public at the outreach meetings. The agencies have summarized and reviewed these comments, and these comments form the basis of this report.

D. Significant Issues Raised in the EGRPRA Review and the Agencies' Responses

The topics that received the most comments relate to (1) capital, (2) Call Reports, (3) appraisals, (4) frequency of safety-and-soundness bank examinations, (5) the CRA, and (6) BSA/AML. This section of the report discusses these topics and the agencies' response to the most significant issues raised by the commenters. As discussed below, the agencies have taken steps to address many of the issues raised by commenters. The agencies continue to review these and other issues, and intend to take additional steps as appropriate.

1. Capital

Background

In 2013, the agencies published comprehensive revisions to their regulatory capital framework (revised capital rules) designed to address weaknesses that became apparent during the financial crisis of 2007–08.[13] The agencies made a number of changes to the final standards in response to feedback to the proposed rule about the potential impact on community banks. These changes included grandfathering certain non-qualifying capital instruments in the tier 1 capital of bank holding companies with less than $15 billion in consolidated assets, allowing community banks the option to exclude most elements of accumulated other comprehensive income from their capital calculations, which allows community banks to simplify their capital calculations by reducing volatility, and not adopting a proposal that would have made the treatment of residential mortgage loans more complex. In addition, the revised capital rules do not subject community banking organizations to the countercyclical capital buffer, the supplementary leverage ratio, capital requirements for credit valuation adjustments, and

[7] Consistent with EGRPRA's focus on reducing burden on IDIs, the agencies did not include their internal, organizational, or operational regulations in this review.

[8] 79 FR 32172 (June 4, 2014) at *https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12741.pdf*.

[9] 80 FR 7980 (February 13, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf*.

[10] 80 FR 32046 (June 5, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13749.pdf*.

[11] 80 FR 79724 (December 23, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32312.pdf*.

[12] See, Notices Announcing EGRPRA Outreach Meetings: 79 FR 70474 (November 26 2014) *https://www.gpo.gov/fdsys/pkg/FR-2014-11-26/pdf/2014-27969.pdf*; 80 FR 2061 (January 15, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-01-15/pdf/2015-00516.pdf*; 80 FR 20173 (April 15, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-04-15/pdf/2015-08619.pdf*; 80 FR 39390 (July 9, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-07-09/pdf/2015-16760.pdf*; 80 FR 60075 (October 5, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-10-05/pdf/2015-25258.pdf*; and 80 FR 74718 (November 30, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-30247.pdf*

[13] See 12 CFR part 3, 12 CFR 217 (Regulation Q), and 12 CFR 324.

certain disclosure requirements. Further, the agencies determined not to apply to community banks the enhanced prudential standards related to capital plans, stress testing, liquidity and risk management requirements, and the global systemically important bank (GSIB), enhanced supplementary leverage ratio standards and the GSIB surcharge.

EGRPRA Comments

Over 30 commenters, including banking organizations, banking trade associations, and consumer groups, addressed the agencies' regulatory capital requirements. The majority of these commenters focused on the revised capital rules. Several banking organization and trade association commenters suggested that the agencies exempt certain banking organizations from having to comply with all or certain parts of the revised capital rules. Commenters suggested drawing distinctions between community banks with less than $10 billion in total assets, non-systemically important banks with less than $50 billion in total assets, or other banking organizations that can demonstrate high levels of capital. As discussed in more detail below, banking industry commenters also addressed several specific areas of the revised capital rules where they suggested that the agencies should make revisions or provide additional guidance to alleviate regulatory burden. One consumer group commenter objected to the inclusion in the EGRPRA process of rules promulgated in response to the financial crisis that have been in effect for five years or less. This commenter stated that reviewing such rules too soon carries the risk that one-time costs associated with their implementation could be mistaken for their permanent effects.

Impact of prompt corrective action (PCA) requirements on community banks

Two trade association commenters asserted that the PCA requirements impact community banks differently than large banking organizations. These commenters stated that the PCA restrictions discourage investment in struggling community banks more so than large banking organizations because large banking organizations are more likely to receive government support. The commenters asserted that the agencies should make the PCA rules more flexible and that any government support received by large banking organizations should be discounted when evaluating compliance with regulatory capital requirements.

Capital ratios

Comments from a banking trade association and two banking organizations stated that the agencies should simplify and streamline their regulatory capital requirements and should exempt banking organizations that can demonstrate high levels of capital according to certain specified measures from the more complex capital calculations in the revised capital rules. The banking trade association stated that large banking organizations are now subject to numerous duplicative capital ratios (eight total), several of which produce disparate and inconsistent results. To comply with the various requirements in the revised capital rules, the commenter stated that large banking organizations must create redundant and costly compliance systems.

Threshold for application of the most rigorous regulatory capital standards (including the advanced approaches risk-based capital rules)

Four large banking organization commenters stated that the threshold for application of the advanced approaches risk-based capital rules ($250 billion in total consolidated assets or $10 billion in foreign exposure) is outdated and, in light of the costs necessary to implement advanced approaches systems, arbitrarily captures many banking organizations with traditional business models that do not share the same risk profile as the largest and most complex organizations identified as GSIBs by the Board. Three of these commenters suggest limiting the scope of the advanced approaches risk-based capital rules to banking organizations identified as GSIBs. One commenter asserted that the agencies should eliminate the advanced approaches risk-based capital rules altogether because the capital floor established by the Dodd-Frank Act (codified at 12 U.S.C. 5371) has rendered them unnecessary.

Burden of revised capital rules on community banks

Seven commenters from individual community banks and a community bank trade association asserted that the revised capital rules added undue burden on community banks by increasing compliance costs without corresponding benefits to safety and soundness. Several of these commenters suggested completely exempting community banking organizations from having to comply with the revised rules. Others suggested relaxing different aspects of the revised capital rules as they apply to community banks.

Two banking organization commenters suggested allowing community banks to include certain amounts of their allowance for loan and lease losses (ALLL) in tier 1 capital, rather than tier 2 capital, as is currently allowed.

Two banking organization commenters asserted that the revisions to the treatment of mortgage servicing assets (MSAs) were unduly restrictive for community banks. Rather than the requirement for deductions from regulatory capital for concentrations of MSAs above 10 percent of a banking organization's common equity tier 1 capital, these commenters stated that community banks should be permitted to hold MSAs up to 100 percent of common equity tier 1 capital before any deductions apply.

Three banking organization commenters stated that the capital conservation buffer—which restricts dividend and bonus payments for banking organizations that fail to maintain a specified amount of capital in excess of their regulatory minimums—should be removed or modified to permit community banks to pay dividends equal to at least 35 percent of their reported net income for a reporting period, or in the case of banks organized as S-corporations, to pay dividends large enough to cover the tax liabilities assessed to their shareholders.

Definition of high volatility commercial real estate

Four community bank commenters stated that the definition of HVCRE is neither clear nor consistent with established safe and sound lending practices. These commenters stated that the 150 percent risk weight applied to HVCRE lending is too high, and that the criteria for determining whether an acquisition, development, or construction (ADC) loan may qualify for an exemption from the HVCRE risk weight are confusing and do not track relevant or appropriate risk drivers. In particular, commenters expressed concern over the requirements that exempted ADC projects include a 15 percent borrower equity contribution, and that any equity in an exempted project, whether contributed initially or internally generated, remain within the project (*i.e.*, internally generated income may not be paid out in the form of dividends or otherwise) for the life of the project.

Treatment of ALLL

Two banking organization commenters stated that the agencies should remove the current limit on the amount of ALLL that a banking organization may include in its tier 2 capital, which is currently capped at an amount equal to 1.25 percent of the banking organization's standardized total risk-weighted asset amount.

Asset concentrations

One community bank commenter stated that the revised capital rules are only one tool to address risk and that banking organizations should focus more on concentrations of assets and stress tests. In particular, this commenter stated that the revised capital rules should incorporate stress tests and provide more granular risk weights for agriculture, oil and gas, and commercial real estate lending.

Short-term trade financing

One community bank commenter stated that the standardized approach risk weights in the revised capital rules, which reference country risk classifications published by the Organization for Economic Co-Operation and Development (OECD) to establish risk weights for exposures to other banking organizations, inappropriately increased the capital requirements applied to certain trade finance-related claims on other banks. Rather than reference OECD risk classifications, which focus on longer-term financing, the commenter stated that the agencies' capital rules should provide a flat 10 percent capital charge for short-term trade financing provided by banking organizations with less than $10 billion in total assets.

Need for more agency guidance

One community bank commenter asked the agencies to provide more plain-language guidance on capital and other rules. This commenter stated that small banks, in particular, need more guidance on best practices and how to determine how much capital is enough capital.

Agencies' Response

The agencies regularly monitor and analyze developments in the banking industry to ensure that the revised capital rules appropriately reflect risks faced by banking organizations. Through this ongoing process, the agencies consider many issues and determine whether a change to the revised capital rules is appropriate. The agencies note that safety and soundness of community banks depends, in part, on their having and maintaining sufficient regulatory capital. More than 500 banking organizations, most of which were community banks, failed in the aftermath of the financial crisis because they did not have sufficient capital relative to the risks they took.

The agencies understand, however, community banks' concerns that the regulatory capital rules are too complex given community banks' size, risk profile, condition, and complexity. The agencies therefore are developing a proposal to simplify the regulatory capital rules in a manner that maintains safety and soundness and the quality and quantity of regulatory capital in the banking system. To this end, such amendments likely would include (1) replacing the framework's complex treatment of HVCRE exposures with a more straightforward treatment for most ADC loans; (2) simplifying the current regulatory capital treatment for MSAs, timing difference DTAs, and holdings of regulatory capital instruments issued by financial institutions; and (3) simplifying the current limitations on minority interests in regulatory capital. The agencies would seek industry comment on these amendments through the normal notice and comment process.

The agencies do not support making changes to the PCA requirements at this time. These requirements promote timely corrective action to contain the potential costs of the federal deposit insurance program. In response to commenter concerns that there is a disparate impact of PCA requirements between the largest banking organizations and community banks, the agencies note that larger banks are subject to heightened capital and liquidity standards [14] and more frequent examinations. The agencies note that most formal and informal enforcement actions are not entered into pursuant to the PCA authorities but pursuant to the agencies' general safety-and-soundness authorities.

Currently, the agencies are not planning to make revisions to the treatment of ALLL in regulatory capital calculations. However, the agencies are closely monitoring the implementation of the Financial Accounting Standards Board's (FASB) recently published Current Expected Credit Loss, or "CECL" standard, which revises the measurement of the ALLL but, is not required to be adopted before 2020. The agencies have encouraged banking organizations to take steps to assess the potential impact of this new accounting standard on capital. Banking organizations that have issues or concerns about implementing the new CECL standard should discuss their questions with their primary federal supervisor. The agencies provided feedback to the FASB during its development of the CECL standard, conducted informational teleconferences for bankers, issued a series of CECL standard FAQs, and plan to work together to address questions from community banks regarding the implementation of that standard. As the agencies consider future changes to their respective revised capital rules, they will consider the impact of the CECL standard on ALLL and related capital calculations.

Concurrent with the publication of the revised capital rules in 2013, the agencies published a community bank guide to help community banks understand the sections of the revised capital rules most relevant to their operations.[15] The OCC also notes that it has published a number of guidance documents to assist banks in their capital planning efforts.[16] Additionally, the OCC intends to publish substantial revisions to its capital handbook so that the recent OCC guidance publications and the recent revisions to the OCC's capital regulations will be set forth and described in one place. The FDIC also issued a number of guidance documents on the revised capital rules to assist community banks in their implementation of the capital rules. The FDIC published an "Expanded Community Bank Guide to the New Capital Rule" and also filmed video presentations discussing the capital regulations.[17] In addition, the Board has issued capital planning guidance for large and noncomplex banking organizations, large and complex banking organizations, and for banking organizations supervised under the Large Institution Supervision

[14] In 2014, the agencies finalized a rule that created a standardized quantitative minimum liquidity requirement for large and internationally active banking organizations, requiring such organizations to maintain an amount of high-quality liquid assets that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period. See 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC). In 2016, the agencies proposed a rule requiring the same large and internationally active banking organizations to maintain a minimum level of stable funding relative to the liquidity of its assets, derivative exposures, and commitments, over a one-year period. See 81 FR 35124 (June 1, 2016).

[15] "New Capital Rule; Community Bank Guide," *www.occ.gov/news-issuances/news-releases/2013/2013-110b.pdf*; *www.fdic.gov/regulations/capital/capital/Community_Bank_Guide.pdf.*

[16] See, for example, OCC Bulletin 2012–16, (June 7, 2012) "Capital Planning: Guidance for Evaluating Capital Planning and Adequacy."

[17] See FDIC webpage on "Regulatory Capital" *www.fdic.gov/regulations/capital/capital/index.html.* This webpage provides all FDIC resources available to assist banks in their implementation of the capital rules.

Coordinating Committee (LISCC) framework.[18] The Board's guidance provides core capital planning expectations for these banking organizations, building upon the capital planning requirements in the Board's capital plan rule and stress test rule.

2. Call Reports

Background

Section 7(a) of the FDI Act requires each IDI to submit four ''reports of condition'' each year to the appropriate federal banking agency. Part 304 of the FDIC's regulations requires IDIs to file quarterly Consolidated Reports of Condition and Income, forms FFIEC 031 and 041 (also known as the Call Report), in accordance with the instructions for these reports.

EGRPRA Comments

The agencies received comments on Call Reports from over 30 commenters. Most commenters represented banking institutions, a few commenters represented industry organizations, and one commenter represented a community organization. Many commenters described the overall regulatory burden financial institutions encounter when preparing Call Reports. A number of commenters suggested reducing Call Report burden by instituting a ''short form'' or an otherwise tiered Call Report, either for all banks or for community banks. Other commenters remarked on the difficulties in preparing two particular Call Report schedules (Schedule RC-R, Regulatory Capital, and Schedule RC-C, Loans and Lease Financing Receivables), while others commented on specific Call Report line items or other aspects of the Call Report.

Several commenters argued that Call Report data are too burdensome and advocated for a review of the report and its simplification and harmonization to eliminate duplicative or unnecessary items. One commenter urged the agencies not to add to the information collected in the Call Report unless it serves an important supervisory purpose that could not otherwise be met at a lower cost. Another commenter urged the agencies to allow institutions additional time every quarter to report information that is not used for safety and soundness, which is otherwise due 30 days after the end of the quarter. Several other commenters noted the disparity in the content of the Call Report for FDIC-insured institutions and the regulatory reports required for credit unions and other financial institutions.

As noted above, a number of commenters suggested the development of a short-form Call Report for all institutions or at least for community banks. Several of the commenters suggested that banks file this short-form report, which would consist of only a balance sheet, income statement, and statement of changes in equity capital, for the first and third quarters with a full regular Call Report for the second and fourth quarters. Another commenter suggested that banks file only one full Call Report per year. Other commenters suggested that highly rated and well-capitalized institutions file the short-form and the full report in alternating quarters. One commenter suggested that banks file only those portions of the Call Report relating to high-risk activities on a quarterly basis, and file the other portions of the report annually.

A number of commenters raised concerns about the length and complexity of Schedule RC-R, Regulatory Capital, and requested that the agencies simplify the schedule because it is excessively burdensome. Commenters raised concerns about the length of the instructions for this schedule and that many of the line items are not applicable to most banks. Several commenters suggested that Schedule RC-C, Loans and Lease Financing Receivables, is very burdensome because institutions need to extract certain information manually from other systems. Other commenters remarked that the process to identify and report loans that are troubled debt restructurings is labor intensive and time consuming, and that data on loans to small businesses and small farms are time consuming to prepare and not useful.

Two commenters requested that the agencies remove the requirement that three bank directors sign the Call Report, given the difficulty in obtaining electronic signatures of directors in different locations. These commenters suggested instead that the agencies permit a consolidated sign-off by one officer of a BHC on the FRY-8, *The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates*. The commenters addressed the need to provide global formatting and consistent definitions across agency application forms and regulatory reports.

One commenter supported strengthening the information collected in the Call Report because of heightened concerns over the safety and soundness of certain fees and products offered by IDIs.

Agencies' Response

The agencies agree that the Call Report is burdensome for some IDIs and are taking steps to reduce the Call Report requirements. At its December 2014 meeting, the FFIEC directed its Task Force on Reports (TFOR) to undertake a community bank Call Report burden-reduction initiative, which includes the following five actions:

- Issuing a proposal in 2015 to request comment on a number of burden-reducing changes identified during the agencies' 2012 statutory review of the Call Report as well as any other readily identifiable burden-reducing changes; [19]
- Accelerating the start of the next statutorily mandated review of all Call Report data items,[20] which would not otherwise begin until 2017, and requiring agency users of Call Report data to provide a robust justification of the need for the data items they use and deem essential;
- Considering the feasibility and merits of creating a less burdensome version of the Call Report for institutions that meet certain criteria, which may include an asset-size threshold or activity limitations;
- Gaining a better understanding, through industry dialogue, of the aspects of institutions' Call Report preparation process that are significant sources of reporting burden, including where manual intervention by an institution's staff is necessary to report particular information; and
- Providing targeted training to bankers via teleconferences and webinars to explain upcoming reporting changes and provide guidance on challenging areas of the Call Report.[21]

On September 18, 2015, the agencies, under the auspices of the FFIEC, requested comment on various proposed revisions to the Call Report requirements. The proposed reporting changes included certain burden-

[18] See SR letter 15–18, Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms at *www.federalreserve.gov/bankinforeg/srletters/sr1518.htm*; and SR letter 15–19, Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms at *www.federalreserve.gov/bankinforeg/srletters/sr1519.htm*.

[19] 80 FR 56539 (September 18, 2015).

[20] 12 U.S.C. 1817(a)(11). This statute requires the agencies to review every five years the information required to be filed in the Call Report and reduce or eliminate any items the agencies determine are no longer necessary or appropriate.

[21] Two FFIEC teleconferences conducted on February 25, 2015, and December 8, 2015, included presentations to bankers on the revised Call Report Schedule RC-R regulatory capital reporting requirements that took effect on March 31, 2015, followed by question-and-answer sessions.

reducing changes, several new and revised Call Report data items, and a number of instructional clarifications. The comment period for the proposal ended on November 17, 2015. After considering the comments received on the proposal, the FFIEC and the agencies are implementing, with some modifications, most of the proposed reporting changes. On July 13, 2016, the agencies published the final version of these Call Report revisions in the **Federal Register**, and submitted the revised Call Report requirements for approval to the OMB.[22] Following OMB approval, some of the Call Report revisions took effect September 30, 2016, and others will take effect March 31, 2017.

As the foundation for the agencies' statutorily mandated review of the existing Call Report data items, users of Call Report data items at the FFIEC member entities are participating in a series of nine surveys conducted over a 19-month period that began in July 2015. The surveys asked users to explain fully the need for and use of each Call Report data item they deem essential to their job functions. Based on the survey results, the TFOR is identifying data items to be considered for elimination, less frequent collection, or new or upwardly revised reporting thresholds.

In addition, the TFOR conducted and participated in outreach efforts between mid-2015 and early 2016 to obtain feedback from community bankers about sources of Call Report burden and options for Call Report streamlining. These targeted outreach efforts were in addition to the outreach meetings conducted as part of the EGRPRA review. Furthermore, representatives from the FFIEC member entities visited nine community banking institutions during the third quarter of 2015. In the first quarter of 2016, two banking trade groups each organized a number of conference call meetings with small groups of community bankers in which representatives from the FFIEC member entities participated. During the visits to banks and the conference call meetings, the community bankers explained how they prepare their Call Reports, identified which schedules or data items take a significant amount of time and/or manual processes to complete, and described the reasons for this. The bankers also offered suggestions for streamlining the Call Report.

The FFIEC member entities collectively reviewed the feedback from the banker outreach efforts completed in 2015 and 2016, the EGRPRA comments, and the results of the first three surveys of their Call Report users as they considered whether to proceed with the development of a Call Report streamlining proposal for community institutions.[23] In addressing these concerns, the FFIEC and the agencies are aiming to balance institutions' requests for a less burdensome regulatory reporting process with FFIEC member entities' need for sufficient data to monitor the condition and performance, and ensure the safety and soundness, of institutions; and to carry out agency-specific missions.

With these goals in mind, the agencies, under the auspices of the FFIEC, published an initial **Federal Register** notice on August 15, 2016, requesting comment on a proposed separate, streamlined, and noticeably shorter Call Report to be completed by eligible small institutions, which has been designated as the FFIEC 051 Call Report.[24] The proposal also includes certain burden-reducing revisions to the two existing versions of the Call Report: the FFIEC 041 for institutions with domestic offices only and the FFIEC 031 for institutions with domestic and foreign offices.

This proposal defines ''eligible small institutions'' as institutions with total assets of less than $1 billion and domestic offices only.[25] Such institutions currently file the FFIEC 041 Call Report. Eligible small institutions would have the option to file the FFIEC 041 Call Report rather than the FFIEC 051. A small institution otherwise eligible to file the FFIEC 051 Call Report may be required to file the FFIEC 041 based on supervisory needs. The agencies anticipate making such determinations only in a limited number of cases.

The existing FFIEC 041 Call Report served as the starting point for developing the proposed FFIEC 051 Call Report for eligible small institutions. The agencies' streamlining proposal would reduce the length of the Call Report for such institutions from 85 to 61 pages and would remove approximately 950, or approximately 40 percent, of the nearly 2,400 data items currently included in the FFIEC 041 Call Report. Specifically, the agencies made the following changes to the FFIEC 041 to create the proposed FFIEC 051:

- The addition of a Supplemental Schedule to collect a limited number of indicator questions and indicator data items on certain complex and specialized activities as a basis for removing all or part of six schedules (and other related items) currently included in the FFIEC 041;
- The elimination of data items identified as no longer necessary for collection from institutions with less than $1 billion in total assets and domestic offices only during the completed portions of the statutorily mandated review or during a separate interagency review that focused on data items infrequently reported by institutions of this size;
- A reduction in the frequency of data collection for certain data items identified as needed less often than quarterly from institutions with less than $1 billion in total assets and domestic offices only; and
- The removal of all data items for which a $1 billion asset-size reporting threshold currently exists.

In addition, a separate shorter Call Report instruction book would be prepared for the FFIEC 051.

The agencies proposed that these reporting changes take effect March 31, 2017. The comment period for the proposal ended on October 14, 2016. The agencies collectively received approximately 100 unique comment letters plus approximately 1,000 form letters advocating for a short-form Call Report. The TFOR evaluated the comments and considered additional burden-reducing changes it could recommend making to the proposed FFIEC 051 Call Report. The most substantive recommended modification was to reduce the reporting frequency of Schedule RC-C, Part II, on loans to small businesses and small farms from quarterly to semiannually for all institutions filing the FFIEC 051 Call Report. On December 1, 2016, the FFIEC approved moving forward with the proposed FFIEC 051 Call Report for eligible small institutions and the other proposed burden-reducing changes to the existing FFIEC 031 and FFIEC 041 Call Reports effective March 31, 2017, including the modifications recommended in response to comments. On January 9, 2017, the agencies, under the auspices of the FFIEC, published a final **Federal Register** notice finalizing the reporting requirements for the new and streamlined FFIEC 051 Call Report

[22] 81 FR 45357 (July 13, 2016).

[23] The statutorily mandated review of the existing Call Report data items is an ongoing process. Any burden-reducing reporting changes resulting from the fourth through ninth surveys will be included in future Call Report proposals.

[24] 81 FR 54190 (August 15, 2016).

[25] As part of the burden-reduction initiative, the agencies are committed to exploring alternatives to the $1 billion asset-size threshold that could extend the eligibility to file the FFIEC 051 to additional institutions.

for eligible small institutions, subject to OMB approval.[26]

The agencies anticipate that further Call Report streamlining will be included in future proposals based on the results of the portions of the statutorily mandated Call Report review that had not been completed when the August 2016 proposal was issued. In particular, any future simplification of capital rules may significantly reduce the difficulty of completing the Call Report's capital schedule, which was viewed as particularly burdensome by commenters. As described more fully above, the agencies are developing a proposal to simplify the regulatory capital rules in order to address industry concerns about excessive complexity.

3. Appraisals

Background

Title XI of FIRREA (Title XI) requires the federal banking agencies, along with the NCUA, to adopt regulations regarding the performance of appraisals used in connection with federally related transactions to protect federal financial and public policy interests in such transactions.[27] Under the regulations that implement provisions of Title XI,[28] (Title XI appraisal regulations) an appraisal conducted by a state-licensed or state-certified appraiser is required for any federally related transaction. A federally related transaction is any real estate-related financial transaction entered into that (1) the agencies engage in, contract for, or regulate; and (2) requires the services of an appraiser. The Title XI appraisal regulations specify a number of types of real estate-related financial transactions that do not require the services of an appraiser and are therefore exempt from the appraisal requirement.

Transactions exempt from the appraisal requirement include those at or below specified monetary thresholds. Title XI authorizes the setting of such thresholds under the condition that the agencies determine in writing that the threshold level does not represent a threat to the safety and soundness of financial institutions.[29] The statute also requires that the agencies receive concurrence from the Consumer Financial Protection Bureau (CFPB) that the threshold level ''provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' [30] Under the current thresholds, residential and commercial real estate loans that are $250,000 or less and certain business loans secured by real estate [31] that are $1 million or less do not require appraisals.

Among other exemptions, the appraisal regulations also exempt transactions from the appraisal requirement if:

- The transaction is wholly or partially insured or guaranteed by a U.S. government agency or U.S. government sponsored agency; or
- The transaction either:
  (1) Qualifies for sale to a U.S. government agency or U.S. government sponsored agency; or
  (2) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) appraisal standards applicable to that category of real estate.[32]

The other federal government agencies that are involved in the residential mortgage market (such as the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and the Rural Housing Service of the U.S. Department of Agriculture), and the government sponsored enterprises (GSEs), which are regulated by the Federal Housing Finance Agency (FHFA), have the authority to set separate appraisal requirements for loans they originate, insure, acquire, or guarantee, and generally require an appraisal by a certified or licensed appraiser for residential mortgages regardless of the value of the loan. Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are not subject to the Title XI appraisal regulations, but the majority of those are subject to the appraisal requirements of other government agencies or the GSEs.[33]

For real estate-related financial transactions at or below the applicable thresholds, and for certain other exempt transactions, the Title XI appraisal regulations require financial institutions to obtain an appropriate ''evaluation'' of the real property collateral that is consistent with safe and sound banking practices. An evaluation, which may be less structured than an appraisal, should contain sufficient information and analysis to support the decision to engage in the transaction. The agencies have provided guidance on the parameters for conducting evaluations in a safe and sound manner.[34]

Agency Dodd-Frank Initiatives

As part of their implementation of the Dodd-Frank Act, the agencies have published several appraisal-related rules. In 2010, the Board issued an interim final rule that requires independent property valuations for consumer credit transactions secured by a consumer's principal dwelling and payment of customary and reasonable fees to appraisers.[35] In February 2013, the federal banking agencies, along with the NCUA, CFPB, and FHFA, jointly published a final rule requiring, among other things, that creditors obtain a written appraisal for certain higher-priced mortgage loans (HPMLs) and provide loan applicants with a copy of the appraisal(s).[36] These same agencies subsequently issued a joint rule with additional exemptions from the HPML appraisal requirements, including for loans of $25,000 or less, adjusted annually for inflation.[37] In June 2015, the federal banking agencies, along with NCUA, CFPB, and FHFA jointly published a final rule that (1) establishes minimum requirements for registration and supervision of appraisal management companies (AMCs) by states electing to participate in the Title XI regulatory framework for AMCs (participating states); (2) requires AMCs controlled by IDIs (federally regulated AMCs) to meet the minimum requirements applicable to AMCs registered and supervised by participating states (other than state registration and supervision); and (3) requires that participating states report certain information on registered AMCs

[26] 82 FR 2444 (January 9, 2017).

[27] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 (codified at 12 U.S.C. 3331 et seq.).

[28] 12 CFR 34, subpart C (OCC); 12 CFR 208.50 (Regulation H) and 12 CFR 225, subpart G (Regulation Y) (Board); 12 CFR 323 (FDIC); and 12 CFR 722 (NCUA).

[29] 12 U.S.C. 3341(b).

[30] Id.

[31] Specifically, the $1 million threshold applies to business loans secured by real estate where repayment is not dependent primarily on the sale of real estate or the rental income derived from real estate.

[32] 12 CFR 34.43 (OCC), 12 CFR 225.63 (Board), 12 CFR323. 3 (FDIC).

[33] See *www.ffiec.gov/hmda/.*

[34] Interagency Appraisal and Evaluation Guidelines, 75 FR 77450 (December 10, 2010). See also Interagency Advisory on the Use of Evaluations in Real-Estate Related Transactions, March 4, 2016; Federal Reserve SR letter 16–5; OCC Bulletin 2016–8; FDIC FIL–16–2016, ''Supervisory Expectations for Evaluations.''

[35] See 15 U.S.C. 1639e; 75 FR 66554 (October 28, 2010) (Interim Final Rule); 75 FR 80675 (December 23, 2010) (Technical Corrections). These rules are published at 12 CFR 226.42. In December 2011, the CFPB published an interim final rule substantially duplicating the rules. See 12 CFR 1026.42.

[36] 78 FR 10368 (February 13, 2013) (Final Rule); 78 FR 78520 (December 26, 2013) (Supplemental Final Rule).

[37] 78 FR 78520 (December 26, 2013) (Supplemental Final Rule); 81 FR 86250 (November 30, 2016) (annual exemption threshold adjustment).

to a national registry maintained by the ASC.[38]

EGRPRA Comments

The agencies received comments on the subject of appraisal requirements from over 160 bankers, banking trade associations, associations of appraisers, and other commenters. As discussed in more detail below, the majority of these comments focused on whether the agencies should increase the transaction value thresholds at or below which an appraisal would not be required by the Title XI appraisal regulations. The agencies also received comments on the availability of appraisers in rural areas, evaluations, appraisal requirements for HPMLs, and AMCs.

Appraisal thresholds

Approximately 25 commenters suggested that the agencies consider increasing the appraisal thresholds in the Title XI appraisal regulations. These commenters noted that the current thresholds have not been adjusted since they were established in 1994, even though property values have increased, and that the time and cost associated with the appraisal process negatively impacts completion of real estate-related transactions. Several commenters suggested that the agencies raise the existing threshold for residential and commercial loans from $250,000 to $500,000 and raise the existing threshold for real estate secured business loans from $1 million to $2 million. Another commenter suggested that the agencies consider increasing the threshold to $1 million for loans secured by multiple 1–4 family rental properties with documented independent sources of cash flow.

Other commenters suggested alternative bases for establishing thresholds such as the loan-to-value ratio of the transaction, market location of the property, median house price in the region, or asset size or the amount of capital retained by the institution. Similarly, some commenters argued that technological advances, such as the internet, or involvement of third parties, have resulted in alternative sources of reliable market and property valuation information that have reduced the need for appraisals. One commenter also suggested that the agencies should allow institutions the option of using appraisals prepared by non-certified appraisers in order to reduce costs and regulatory burden.

Some commenters also stated that the time and financial costs attributed to meeting the appraisal requirements at the current threshold level negatively affect the competitiveness of certain banks, particularly in rural markets. Commenters specifically noted that the costs associated with an appraisal on a small residential loan are high compared to the potential loss on the loan. In addition, some commenters at the outreach session on rural banking issues indicated that they believed that the federal banking agencies' examiners require appraisals, even when evaluations are permissible.

Approximately 125 comments received by the agencies opposed increasing the appraisal thresholds. One commenter argued that the agencies should reduce the threshold from $250,000 to $25,000, which is the threshold for an exemption from the HPML appraisal rule. One professional appraiser association commented that the agencies should set the threshold at $100,000. 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. One professional appraiser association stated that the agencies should not rely on the policies of other regulators with appraisal requirements, such as the FHFA, or on the GSEs to fulfill the safety and soundness and consumer protection purposes of Title XI. Commenters also stated that higher thresholds would subject the least sophisticated borrowers to increased risk.

In addition, several commenters argued that alternatives to appraisals, such as evaluations and automated valuation models (AVMs), which can be used in evaluations, often result in less reliable property valuations than appraisals. More specifically, several commenters stated that AVMs often result in less reliable home valuations because they do not include a physical inspection of the property being valued, and inaccurately base calculations on data from public records. Commenters also suggested that property valuations not performed by a state-certified or licensed appraiser are unreliable indicators of the market value of properties. Some of these commenters noted that certified and licensed appraisers must satisfy rigorous qualification requirements, and thus, their expertise is helpful in areas with less property information, such as rural markets. Similarly, one commenter stated that the expertise of appraisers is needed to value properties in unique circumstances or special property types.

In addition, commenters noted that there are more quality control standards for appraisals than for evaluations and suggested that appraisals impose less regulatory burden and risk on institutions because the appraisal standards are clearer than the regulatory expectations for evaluations. The commenters noted instances of deficient evaluations even though the evaluations aligned with the agencies' 2010 Interagency Appraisal and Evaluation Guidelines. Several commenters also claimed that evaluations do not contain sufficient market information to allow for informed decisions; that the persons preparing evaluations are not professional appraisers and therefore are not accountable; and that evaluations are costly.

Several commenters also expressed the belief that raising the thresholds would hurt the appraisal profession. A commenter noted that appraisers are unable to compete with valuation services not bound by the Uniform Standards of Professional Appraisal Practice (USPAP).

A professional association for appraisers and an appraisal firm claimed that the agencies do not have the authority to raise the thresholds, asserting that raising the $250,000 threshold would effectively repeal Title XI and be contrary to congressional intent. The agencies also received a comment that questioned whether the agencies have the legal authority to raise the appraisal threshold prior to a determination by the CFPB regarding the potential impact such action would have on consumers.[39]

Appraiser shortages in rural areas

Several commenters asserted that there is a shortage of appraisers in rural areas and that because of this shortage, appraisers are significantly backlogged and appraisals take much longer to complete. Some of these commenters asserted that this shortage has brought the rural housing market to a halt in some rural communities. Other commenters expressed that there is no appraiser shortage, only a lack of availability because of the unwillingness of some appraisers to perform appraisals in rural areas. Some commenters also noted that there are few subdivisions, similar houses, or similarly sized tracts of land available for comparison in rural areas. These

[38] 80 FR 32657 (June 9, 2015).

[39] See 12 U.S.C. 3341(b). As noted, the statute requires that the agencies receive concurrence from the CFPB that the threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

commenters noted that there are often few comparable sales within a year and that it is not uncommon to have acceptable comparable sales located 20 or more miles from the appraised property.

Evaluations

At EGRPRA outreach meetings, community bankers, particularly those in rural areas, raised questions regarding the value and appropriate use of evaluations. In particular, they questioned how to determine the market value of real estate through the evaluation process, especially in rural areas where there have been no or few comparable sales.

Appraisals for HPMLs

As discussed above, the Dodd-Frank Act established appraisal requirements for HPMLs (termed ''higher-risk mortgages'' in the statute), which are defined as closed-end consumer credit transactions secured by a consumer's principal dwelling that have annual percentage rates above a certain threshold.[40] The Dodd-Frank Act requires creditors to obtain a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the home's interior before making these loans.[41] The Dodd-Frank Act also requires creditors to disclose to HPML applicants information about the purpose of the appraisal and provide consumers with a copy of the appraisal report(s) at no charge within certain timeframes.[42]

The agencies received six comments concerning the HPML appraisal requirements. One small rural bank commenter suggested that the HPML appraisal requirements impose undue burden on borrowers and lenders. This commenter stated that, due to the HPML appraisal requirements and other rules, some community banks are leaving the home lending market.[43] The commenter suggested that low-and-moderate income (LMI) borrowers purchasing homes under $50,000 are affected disproportionately by the compliance burden of these rules. A commenter from a state bank trade association argued that the agencies should expand the HPML exemptions to include an exemption based on the value of the collateral, and mentioned that, for example, home values in rural areas of this state are between $40,000 and $50,000 (which is higher than the current $25,000 exemption). This commenter also suggested that creditors in rural areas with few appraisers might be concerned about having to obtain an appraisal conducted by an appraiser from a distant area and, therefore, might be faced with a decision about whether to price a loan based on risk in the transaction or to price it lower to avoid triggering the HPML appraisal requirements. The commenter asserted that allowing local bank or real estate brokers to perform valuations for very low value properties would allow rural borrowers in particular to obtain more accurate and less costly valuations and would increase credit availability.

A national community bank trade association suggested that HPML appraisal requirements should be the same as non-HPML appraisal requirements, citing complaints by community banks about having to comply with more than one set of appraisal rules.

A community bank commenter discussed the disclosure requirements for valuations under Regulation B (Equal Credit Opportunity Act (ECOA))[44] as compared to the HPML appraisal rule.[45] The commenter pointed out, for example, that qualified mortgages (QMs) are exempt from the HPML appraisal rule, but not the Regulation B rule, and that the Regulation B valuation disclosure rule applies to business and consumer first-lien loans secured by a 1–4 family property, whereas the HPML disclosure requirement applies to HPMLs, which are closed-end, first- or second-lien loans secured by a consumer's principal dwelling (thus, only consumer loans). The bank commenter also expressed confusion about timing requirements for Truth in Lending Act-Real Estate Settlement Procedures Act (TILA-RESPA) mortgage disclosures and the HPML timing requirement for providing the consumer with a copy of the appraisal (three business days before closing).

Finally, one commenter suggested that it would be premature to change the HPML exemption threshold since it has been in effect only for a short period of time. This commenter cited heightened consumer protection risks for consumers of HPMLs and noted that creditors do not bear the cost of appraisals but pass them along to consumers.

AMCs

Several commenters addressed the role of AMCs in the appraisal process. Some of these commenters criticized AMCs' role as intermediary between lenders and appraisers, raising concerns over AMCs' impact on the increasing cost of appraisals, the extended time period that is required to complete appraisals, and the quality of appraisals. Several commenters argued that AMCs circumvent the regulatory process and appraisers, and that their administration of the appraisal process is driven by profit and expansion, rather than concern for the appraisal profession, the mortgage industry, or accurate property valuations. Several commenters suggested that some AMCs have pressured appraisers to reach desired property values, and that appraisers risk losing work if they do not comply. The commenters also suggested that the perceived shortage of certified appraisers is caused by the low fees that AMCs pay appraisers to value properties, and that appraisers are leaving the industry as a result. Two commenters stated that regulations requiring that creditors and AMCs pay appraisers customary and reasonable fees are not enforced. Several of the commenters argued that increasing the appraisal threshold (to exempt more transactions from the Title XI appraisal requirement) is not necessary, and would only exacerbate underlying issues in the appraisal process that are attributed to AMCs. Some commenters also asserted that completion times for appraisals have become a competitive selling strategy for many AMCs, often at the expense of appraiser competency for the assignment. As a solution to these issues, some commenters suggested removing AMCs from the appraisal process.

Agencies' response

Appraisal thresholds

The agencies considered the appropriateness of the existing appraisal thresholds in the context of the comments received and the agencies' prudential standards for safety and soundness. The agencies also gave special consideration to the issue of appraiser shortages in rural areas.

The agencies recognize that the thresholds were last modified in 1994. Given increases in property values since that time, in certain circumstances, the current thresholds may require institutions to obtain Title XI appraisals

[40] See, *e.g.,* 12 CFR 1026.35(a)(1).

[41] 15 U.S.C. 1639h(a) and (b).

[42] Id. section 1639h(c) and (d).

[43] The commenter also mentioned home ownership counseling requirements under the Home Ownership and Equity Protection Act as well as ''new CFPB housing rules.'' The agencies do not have authority over these requirements.

[44] 12 CFR 1002.14.

[45] Another EGRPRA commenter raised concerns specifically about the CFPB's Regulation B valuation disclosure requirement because it does not distinguish between consumer-purpose and business-purpose loans. This commenter did not mention the HPML appraisal disclosure requirements.

on a larger proportion of loans than was required in 1994. The agencies recognize that this proportional increase in the numbers of appraisals required may contribute to the increased time and cost issues raised by the EGRPRA commenters. As such, the federal banking agencies, along with the NCUA, are developing a proposal to increase the threshold related to commercial real estate loans from $250,000 to $400,000. As part of that proposal, the agencies plan to gather more information about the appropriateness of increasing the $1 million threshold related to real estate-secured business loans.

The agencies also considered the potential burden created by the current $250,000 threshold for loans secured by residential real estate.[46] As noted above, certain other federal government agencies and the GSEs are involved in the residential mortgage market, and have the authority to set appraisal requirements for loans they originate, acquire, or guarantee. Therefore, raising the appraisal threshold for residential transactions in the Title XI appraisal regulations would have limited impact on burden, as appraisals would still be required pursuant to the rules of other entities.

The agencies also considered safety and soundness and consumer protection concerns that could result from a threshold increase for residential transactions. The last financial crisis showed that, like other asset classes, imprudent residential mortgage lending can pose significant risks to financial institutions. In addition, the agencies recognize that appraisals can provide protection to consumers by helping to assure the residential purchaser that the value of the property supports the mortgage amount assumed. Overall, the agencies believe that the interests of consumers are better served when appraisal regulations are coordinated among government agencies.

In considering the EGRPRA comments on this issue, the agencies also conferred with the CFPB. As noted earlier, changes to the appraisal threshold require the CFPB's concurrence that the adjusted threshold level ''provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' [47] CFPB staff shared concerns about potential risks to consumers resulting from an expansion of the number of residential mortgage transactions that would be exempt from the Title XI appraisal requirement.

Based on considerations of safety and soundness and consumer protection, the agencies do not currently believe that a change to the current $250,000 threshold for residential mortgage loans would be appropriate. The agencies will continue to consider possibilities for relieving burden related to appraisals for residential mortgage loans, such as coordination of our rules with the practices of HUD, the GSEs, and other federal entities in the residential real estate market.

Appraiser shortages in rural areas

The agencies have considered the concerns raised regarding potential appraiser shortages and related issues in rural areas. Title XI grants the ASC temporary waiver authority. Specifically, Title XI grants the ASC the authority, after making certain findings and with the approval of the FFIEC, to grant temporary waivers of any requirement relating to certification or licensing of a person to perform appraisals under Title XI in states or geographic political subdivisions of a state where there is a shortage of appraisers leading to significant delays in obtaining an appraisal in connection with federally related transactions.[48] These temporary waivers would allow institutions lending in affected areas access to more individuals eligible to complete the appraisals required under Title XI, which would alleviate some of the cost and burden associated with having a shortage of certified or licensed appraisers in an area. As Council members of the FFIEC and members of the ASC, the federal banking agencies participate in this waiver process.

Additionally, state appraiser certifying and licensing agencies have existing authority to recognize, on a temporary basis, the certification or license of an appraiser issued by another state.[49]

In order to address the concerns related to rural areas, the agencies will work with the ASC to streamline the process for the evaluation of temporary waiver requests. The agencies also intend to issue a statement to regulated entities informing them of the availability of both temporary waivers and temporary practice permits, which are applicable to both commercial and residential appraisals, and may address temporary appraiser shortages. The agencies note that the waiver option is available for all types of federally related transactions. In addition to other measures discussed in this report to relieve burden related to appraisals, the agencies affirm that they will continue to consider possibilities for relieving burden related to appraisals for residential real estate loans, such as coordinating our rules with the practices of HUD and other federal government agencies that are involved in the residential mortgage market, as well as with the GSEs.

Evaluations

To address comments and to clarify current supervisory expectations regarding evaluations, the agencies issued an interagency advisory on evaluations in March 2016.[50] The advisory reiterated what transactions permit the use of evaluations; these include transactions valued under the dollar thresholds established in the appraisal regulations and certain refinance or subsequent transactions. The advisory also explained that the Title XI appraisal regulations do not require that evaluations be prepared by a state-licensed or state-certified appraiser or to conform with USPAP, and that there is no standard format for an evaluation report. Furthermore, the advisory explained that an evaluation does not need to be prepared only by using sales of comparable properties to estimate market value. For areas where comparable sales are in short supply, the advisory reminded bankers that evaluations may use other valuation approaches.

Appraisals for HPMLs

Regarding comments about the HPML appraisal rule, the agencies note that the rule is a joint rule among the federal banking agencies and agencies that are not part of the EGRPRA process (the NCUA,[51] CFPB, and FHFA). The federal banking agencies have determined not to pursue changes to the HPML appraisal rules at this time, but will continue to consider the comments offered through the EGRPRA process.

Regarding the comment that requirements for HPMLs be the same as for non-HPMLs, the agencies note that the HPML appraisal rules implement specific statutory provisions that Congress enacted for loans that they considered to be ''higher-risk.'' [52] At the same time, the agencies take seriously

[46] Residential real estate transactions typically include 1–4 family consumer loans. Typically, multifamily residential real estate transactions are considered commercial real estate transactions for which the agencies intend to propose a threshold increase.

[47] 12 U.S.C. 3341(b).

[48] 12 U.S.C. 3348(b).

[49] 12 U.S.C. 3351(a).

[50] Interagency Advisory on the Use of Evaluations in Real-Estate Related Transactions, March 4, 2016; Federal Reserve SR letter 16–5; OCC Bulletin 2016–8; FDIC FIL–16–2016, ''Supervisory Expectations for Evaluations.''

[51] Although not required to by statute, NCUA voluntarily conducted its own, separate EGRPRA review.

[52] 15 U.S.C. 1639h.

concerns raised by commenters about the burden of complying with these rules. In this regard, the federal banking agencies note that many significant exemptions from the HPML rules are already in place. The statutory provisions establishing special appraisal rules for HPMLs exempt all QMs (a large proportion of the mortgage market).[53] Further, in two separate rulemakings,[54] the federal banking agencies, NCUA, CFPB, and FHFA jointly exempted several additional classes of loans from the HPML appraisal rules, including certain construction loans, bridge loans, reverse mortgages, refinance transactions meeting certain criteria, and loans of $25,000 or less, adjusted annually for inflation ($25,500 for 2016).[55]

In establishing the transaction size exemption threshold, the six agencies issuing the rules carefully considered all of the comments submitted on the issue, including suggestions that the exemption threshold be higher.[56] The six agencies set the threshold bearing closely in mind the two-pronged statutory standard for establishing exemptions from the HPML appraisal rules: the agencies must jointly determine that any exemption ''is in the public interest and promotes the safety and soundness of creditors.'' [57]

In addition, the six agencies that jointly issued the rules gave special study and consideration to manufactured home lending and endeavored to design rules tailored to address valuation issues unique to this market segment. In so doing, the agencies sought to craft HPML appraisal rules that would make sense in that industry, while still addressing the consumer protection and other risks Congress sought to mitigate in the Dodd-Frank Act.[58]

Regarding the comment expressing confusion about overlapping disclosure requirements, the agencies note that the HPML appraisal rule provides that compliance with the Regulation B/ ECOA valuation disclosure requirement satisfies the HPML disclosure requirement.[59] Generally, the timing of the HPML disclosure requirement coincides with the required timing for providing the TILA-RESPA Loan Estimate (generally three business days after application).[60] The timing of the HPML requirement for providing the consumer with a copy of the appraisal also coincides with the required timing for providing the TILA-RESPA Closing Disclosure (generally three business days before consummation).[61] The agencies appreciate that confusion can result from multiple disclosure requirements and will consider further how to clarify questions regarding them. The agencies conduct regular meetings with the CFPB regarding implementation of the various mortgage rules, and will continue to seek interagency coordination on issues concerning these rules.

AMCs

The agencies also have considered the comments raised regarding AMCs. The Dodd-Frank Act amended Title XI to require the agencies, along with the NCUA, CFPB, and FHFA, to develop minimum requirements for the registration and supervision of AMCs operating in participating states and to apply certain requirements to federally regulated AMCs. In addition, the Dodd-Frank Act amendments required that a National Registry of AMCs be established and administered by the ASC.[62] In June 2015, the agencies, along with the NCUA, CFPB and FHFA, issued joint rules establishing minimum requirements for AMCs. The AMC regulation integrates AMCs into the existing framework for the supervision of appraisers and appraisal-related services, and maintains standards for the development and quality of appraisals. As part of the system, newly registered AMCs now are responsible for applying minimum standards to their business activities. Further, AMCs are now required to engage only certified and licensed appraisers for federally related transactions and must direct appraisers to perform such assignments in accordance with USPAP. The agencies believe that the rule addresses the AMC-related issues raised by the EGRPRA commenters by providing minimum requirements for state supervision of AMCs and establishing oversight of federally regulated AMCs.[63]

The AMC rule establishes minimum requirements for states electing to register and supervise AMCs covered by the rule to ensure that the AMCs engage appraisers who are independent and competent for a particular transaction. The agencies believe that the safety and soundness of institutions is enhanced when appraisers are given a reasonable amount of time to complete assignments, so that they can ensure that the appraisal report has sufficient information to support the decision to engage in the transaction and that safety and soundness is served when appraisers are engaged based on their competency for the assignment.

Title XI allows states up to three years following the finalization of the AMC rule to establish registration and supervision systems that meet the regulatory requirements. AMCs that are not either subject to oversight by a federal financial institution regulatory agency or registered in a particular state will be prohibited from providing services for federally related transactions in that state. In any state which does not adopt a registration and supervision system, all AMCs that are not subject to oversight by a federal financial institutions regulatory agency will be prohibited from providing services for federally related transactions. The ASC, with the approval of the FFIEC, may delay the implementation deadline for an additional year, if a state has made substantial progress toward implementing a system that meets the criteria in Title XI. Because states are still in the process of implementing the AMC rule, the agencies need additional time to assess the rule's impact.

Regarding concerns expressed by commenters about appraiser fees, the Board issued the 2010 interim final rule on valuation independence and customary and reasonable fees for appraisers within 90 days after the enactment of the Dodd-Frank Act, as directed by the statute.[64] Any future rules implementing these statutory provisions must be issued on an interagency basis by the Board and five other agencies—the OCC, FDIC, NCUA, CFPB and FHFA.

[53] 15 U.S.C. 1639h(f)(1).

[54] 78 FR 10368 (February 13, 2013) (Final Rule); 78 FR 78520 (December 26, 2013) (Supplemental Final Rule).

[55] See 12 CFR 34.203(b) (OCC); 12 CFR 226.43(b) (Board); 12 CFR 1026.35(c)(2) (CFPB, applies to FDIC-supervised institutions).

[56] 78 FR 78520, 78528–73532 (December 26, 2013).

[57] 15 U.S.C. 1639h(b)(4)(B).

[58] See 78 FR 78520, 78542–78561 (December 26, 2013).

[59] See 12 CFR 34.203(e)(1) (OCC); 12 CFR 226.43(e)(1) (Board); 12 CFR 1026.35(c)(5)(i) (CFPB, applies to FDIC-supervised institutions).

[60] See 12 CFR 1026.19(e)(1)(iii) (Loan Estimate); 12 CFR 34.203(e)(2) (OCC), 12 CFR 226.43(e)(2) (Board), and 12 CFR 1026.35(c)(5)(ii) (CFPB, applies to FDIC-supervised institutions) (appraisal disclosure for HPMLs).

[61] See 12 CFR 1026.19(f)(1)(ii) (Closing Disclosure); 12 CFR 34.203(f)(2) (OCC), 12 CFR 226.43(f)(2) (Board), and 12 CFR 1026.35(c)(6)(ii) (CFPB, applies to FDIC-supervised institutions) (copy of appraisal for HPMLs).

[62] Dodd-Frank Act, section 1473(f)(2), 12 U.S.C. 3353.

[63] 80 FR 32657 (June 9, 2015).

[64] See *www.federalreserve.gov/newsevents/press/bcreg/20101018a.htm* (October 18, 2010), 75 FR 66554 (October 28, 2010) (Interim Final Rule); 75 FR 80675 (December 23, 2010) (Technical Corrections). These rules are published at 12 CFR 226.42. In December 2011, the CFPB published an interim final rule substantially duplicating the rules. See 12 CFR 1026.42.

When it issued the 2010 interim final rule, the Board determined that the statute's requirement for paying ''customary and reasonable'' fees did not authorize the Board to set appraiser fees at a particular level. Accordingly, the interim final rule gives lenders two market-based methods to follow. To address appraisers' concerns, the agencies expect to review the interim rule and study its impact to help determine whether there are alternative approaches that could be more effective.

4. Frequency of Safety and Soundness Examinations

Background

Section 10(d) of the Federal Deposit Insurance Act (FDI Act) generally requires the appropriate federal banking agency for an IDI to conduct a full-scope, on-site examination of the IDI at least once during each 12-month period.[65] However, the statute permits a longer cycle—at least once every 18 months—for a well capitalized and well managed IDI that meets certain other supervisory criteria, including having total assets below a specified threshold.[66]

EGRPRA Comments

Over 30 different banking institutions and industry organizations addressed the frequency of safety and soundness examinations. Commenters generally expressed support for an increase in the amount of time between safety and soundness examinations and for an increase in the associated asset size threshold for institutions that qualify for an 18-month examination cycle.

Specifically, the agencies received comments requesting that they raise the total asset threshold for an IDI to qualify for the extended 18-month examination cycle. Commenters asserted that the $500 million threshold for 18-month examinations was too low and should be increased to amounts ranging from $1 billion to $2 billion. The majority of these commenters advocated raising the total asset threshold for a longer examination cycle to $1 billion.

The agencies also received several suggestions to extend the amount of time between examinations for well-capitalized and well-managed IDIs. These commenters suggested increasing the time between examinations from 18 months to between 24 and 36 months.

Some commenters also suggested a more tailored approach to determining the amount of time between safety and soundness examinations that would be based on examiner judgment and discretion. These commenters recommended that the agencies consider the activities of the banking institution in determining the frequency of examinations, with more traditional community banks receiving more time between examinations. One commenter, however, suggested that the agencies should have no discretion in determining which institutions would qualify for an extended examination cycle and that such extended examination cycles should be automatic.

Agencies' Response

The agencies indicated support for revisions to the statute regarding examination frequency. Subsequently, in December 2015, President Obama signed into law the FAST Act.[67] Section 83001 of the FAST Act raised the threshold for the 18-month examination cycle from less than $500 million to less than $1 billion for certain well capitalized and well managed IDIs with an ''outstanding'' composite condition and gave the agencies discretion to similarly raise this threshold for certain IDIs with an ''outstanding'' or ''good'' composite condition. The agencies exercised this discretion and issued an interim final rule on February 29, 2016, that, in general, makes qualifying IDIs with less than $1 billion in total assets eligible for an 18-month (rather than a 12-month) examination cycle.[68] On December 16, 2016, the agencies published this rule as a final rule with no changes.[69] Agency staff estimate that the final rules increased the number of institutions that may qualify for an extended 18-month examination cycle by approximately 611 institutions, bringing the total number of qualifying institutions to 4,793 IDIs.[70]

5. Community Reinvestment Act

Background

The CRA requires the agencies to assess a financial institution's record of meeting the credit needs of its entire community, including LMI neighborhoods, consistent with safe and sound operations.[71] The CRA also requires the agencies to take the financial institution's CRA performance record into account in evaluating applications for deposit facilities. Congress has amended the CRA statute since its enactment to require written public evaluations and, when a financial institution has branches in more than one state, ratings in each state where it has branches or deposit taking ATMs.

The agencies have implemented the CRA through interagency regulations that set forth several evaluation methods for institutions of different sizes and business strategies.[72] Large institutions (those with assets of $1.226 billion or more in 2017) are evaluated under lending, investment, and service tests. The lending test involves an analysis of an institution's home mortgage, small business, and small farm lending. The agencies may evaluate consumer lending under certain circumstances. The agencies evaluate small institutions (assets under $307 million in 2017) under a streamlined lending test, which includes an evaluation of lending based on the bank's major product lines. The agencies evaluate intermediate small institutions (assets between $307 million and $1.226 billion in 2017) under the small bank lending test and a community development test. Wholesale and limited purpose banks are evaluated using a community development test. Finally, any financial institution may choose to be evaluated under an agency-approved strategic plan that sets forth performance goals that have been developed with community input.

EGRPRA Comments

Over 60 EGRPRA commenters discussed the CRA. These commenters included primarily banking industry and community and consumer organizations and included participants at the EGRPRA outreach sessions. The commenters addressed a variety of issues related to regulatory burden, but many also addressed broader issues related to modernizing the CRA regulations and related guidance. Among the most frequently raised issues were (1) the assessment area definition; (2) incentives for banks and savings associations (collectively, banks or financial institutions) to serve LMI, unbanked, underbanked, and rural communities; (3) regulatory burdens associated with recordkeeping, reporting requirements, and asset thresholds for the various CRA examination methods; (4) the need for clarity regarding performance measures and better examiner training to ensure consistency and rigor in examinations; and (5) refinement of CRA ratings methodology.

[65] The agencies' implementing regulations for frequency of safety-and-soundness examinations are set forth at 12 CFR 4.6 (OCC), 12 CFR 208.64 (Board), 12 CFR 337.12, and 12 CFR 347.211 (FDIC).

[66] 12 U.S.C. 1820(d).

[67] Public Law 114–94, 129 Stat. 1312 (2015).

[68] See 81 FR 10063 (February 29, 2016).

[69] 81 FR 90949 (December 16, 2016).

[70] Id.

[71] 12 U.S.C. 2901 et seq.

[72] The agencies' CRA regulations are set forth at 12 CFR parts 25, 195, 228 (Regulation BB) and 345.

Assessment area definitions

The largest number of comments received on CRA involved assessment area definitions. Numerous community group and industry commenters observed that the assessment area definition no longer reflects the way in which financial services are delivered and urged the agencies to revise the definition to ensure the CRA's continued effectiveness. These commenters noted that technological advances now allow financial institutions to take deposits and make loans without branches and suggested that the current requirements for assessment areas have not kept pace with banking practices that no longer are tied to the physical location of branches. Many commenters asserted that the current assessment area definition should move away from branch-based banking and reflect a world in which banking is increasingly virtual, national, or global. A few commenters mentioned that CRA requirements should occur where depositors reside. Others commenters recommended that regulators should define assessment areas as a metropolitan statistical area where a bank conducts significant business activity.

One commenter specifically provided the following proposed language amending the regulatory definition of assessment area: ''the geographies in which the bank has its main office, its branches, and where a substantial number of depositors reside, as well as geographies in which the bank has originated or purchased a substantial portion of its loans.''

Another commenter suggested that a bank's assessment area should be based on the market it believes it can reasonably serve and that a bank should not be inhibited from providing credit to customers outside of its immediate communities due to artificial restrictions imposed by CRA. A few commenters also suggested revising the assessment areas to include deposits from prepaid cards. Two commenters requested more flexibility for small banks and rural banks. A few commenters suggested that the agencies should promote community development financial institutions (CDFIs) by providing favorable treatment for all investments in CDFIs without regard to assessment areas.

Incentives for banks to serve LMI, unbanked, underbanked, and rural communities

Industry and community commenters addressed the need for more effective incentives for financial institutions to serve LMI individuals and areas, including rural areas. Some commenters suggested enhanced consideration of CRA activities that require significant effort and expertise, particularly community development loans, investments, and services tailored to meet the needs of LMI people, such as low-cost deposit and transaction accounts. Some commenters suggested more specific evaluative criteria for certain activities, while others suggested additional rating categories as performance incentives.

The commenters argued that banks need incentives to develop creative solutions to operate in and serve their local communities, particularly LMI and rural areas. A few commenters urged the agencies to set measurable goals and metrics for every bank assessment area to better serve the unbanked and underbanked. Other commenters recommended that the agencies provide additional CRA consideration for high impact projects such as opening or maintaining homeownership preservation offices in LMI neighborhoods. One commenter suggested that the agencies create a rating of ''outstanding plus'' to reward banks for truly outstanding CRA efforts to offer innovative low-cost micro-loans to small businesses.

Several commenters also recommended including an explicit performance factor on the design of, and access to, transaction and savings products and consumer education for LMI people. Some commenters urged the agencies to give CRA consideration to institutions that offer low-cost, safe accounts (particularly accounts that do not include overdraft) and credit building products, such as low-cost alternatives to payday loans. Commenters also suggested additional CRA consideration for mobile branches, prepaid cards, and alternative delivery systems. Two commenters recommended that the agencies provide meaningful and measurable consideration under the service test for alternative delivery systems that effectively deliver services, particularly to LMI individuals.

Similarly, commenters suggested that the agencies consider a number of factors in the evaluation of retail banking services in order to encourage institutions to serve LMI individuals. These factors included consideration of changes in branch locations, branch products, and services resulting from branch closures; LMI customer retention; bank account products and data; and identification policies. Two commenters also favored requiring banks to disclose, and the agencies to consider as part of the CRA exam, demographic information on account holders, accounts, and transactions, including key variables such as the census tract of the account holder's residence, number of new accounts opened, age of account, and percent of bank income generated by fees. One commenter also encouraged the downgrade of banks for consumer services that it alleges strip financial capacity and resources, such as overdraft programs.

Data collection

Commenters also addressed issues related to burden associated with the CRA regulations' current data retention and reporting requirements. Industry commenters urged the agencies to update the regulations' public file requirements by allowing financial institutions to maintain their files electronically, citing the new HMDA rules as a model. One commenter requested that regulators eliminate the requirement that a bank identify all geographies contained in its assessment area due to expense or alternatively require that the public CRA file refer interested parties to a government website with census tract information. One commenter also suggested that the FFIEC manage the public files of all institutions.

Some commenters also discussed the expense associated with collecting and reporting data on community development loans and census tracts within their assessment areas. One commenter suggested raising the CRA regulations' threshold for small business loans from $1 million to $3 million in gross annual revenues. By contrast, community organizations opposed any reduction in CRA reporting requirements. One community group urged the agencies to require intermediate small banks to collect and report small business data in order to allow for a more accurate evaluation of small business credit conditions by the public.

Evaluation thresholds

Several commenters addressed the burden associated with the asset thresholds for the various evaluation methods. One commenter suggested thresholds as high as $5 billion for small bank or intermediate small bank performance standards. Another commenter recommended that the intermediate small bank evaluation method be eliminated altogether in favor of the streamlined examination for small banks. A few commenters addressed the particular needs of small rural banks, suggesting further streamlining of the evaluation with one commenter advocating that small rural banks should be exempt from CRA altogether. One commenter suggested that the CRA examination threshold limits should not be asset based but rather focused on the market or business model of the institution. In addition, a few industry commenters raised the burden associated with the frequency of examinations, arguing for longer intervals between examinations for banks with satisfactory or outstanding ratings. Community organizations opposed extending the examination cycle, which they believe would decrease the level of CRA activity in underserved communities.

Other commenters recommended changes for small banks. These commenters suggested updating the rules related to rural banks (suggesting that the agencies should look at rules, including definitions, to consider not only a bank's size but also the bank's location and relationship to the community). One commenter suggested that the strategic plan option process is too cumbersome and should be streamlined for smaller institutions. A commenter recommended an exemption for any community bank that reinvests a large percentage of its deposits back into its community.

Examination and compliance standards

Several commenters from both industry and community organizations raised the need for more clarity in the examination process. Some commenters focused on more specific standards, with a few suggesting matrices of requirements by bank size, and others suggesting performance benchmarks or scorecards. One commenter supported more data driven performance context information that includes credit needs of an assessment area. In the case of retail services, a commenter argued that the test should include a quantitative and qualitative analysis of how bank services impact LMI communities. Many commenters asserted that the CRA criteria should place more emphasis on the quality of an institution's activities and its impact on the communities it serves. Several commenters stated that the CRA regulations are not applied consistently and urged the agencies to provide more examiner training to promote effective and consistent examinations. Commenters mentioned a need for more consistent treatment of banks within and among the different agencies regarding performance criteria, performance context, and application of definitions. One commenter mentioned that the agencies need to improve and standardize examiner training on CRA to promote effective examination and consistency.

CRA ratings

Several comments from community and consumer organizations raised concern that assigned CRA ratings are not assessing properly the degree to which banks are addressing community credit needs. These commenters based this conclusion on the fact that a significant proportion of banks are rated ''satisfactory'' or ''outstanding'' even though critical community credit needs remain unmet, according to commenters. Commenters offered a variety of suggestions for revising the CRA ratings criteria so that they are more rigorous and offer a more nuanced picture of CRA performance. Several commenters from community organizations argued that a bank's CRA ratings should be negatively impacted by harmful lending and services practices in addition to the illegal or discriminatory lending practices that are currently considered. Some of these commenters urged the agencies to revise the regulation as well as the guidance to provide for greater consideration of harmful and unlawful banking practices. One commenter argued that an institution should not be eligible to receive a ''satisfactory'' CRA rating after a Department of Justice discrimination suit or settlement for violations of fair lending laws. A few commenters suggested that banks should be downgraded for violations of fair housing laws and other consumer protections. In contrast, an industry commenter disagreed with this approach, provided that all other aspects of the bank's performance are ''satisfactory'' or ''outstanding.'' This commenter stated that the agencies should not automatically lower CRA ratings due to an adverse fair lending examination. In addition, some commenters expressed concern that the fair lending discussion contained in the CRA public evaluation is not sufficiently detailed to independently judge the examiners' conclusion.

Commenters also asserted that current ratings do not reflect the reality of differences in bank performance in serving communities and recommended replacing the 0- to 24-point scale with a point system of 1 to 100. Some commenters further contended that measures currently used do not distinguish institutions whose community reinvestment activities are barely satisfactory and need to be improved. Another commenter recommended dividing the ''satisfactory'' CRA rating into ''high satisfactory'' and ''low satisfactory'' ratings as another way to better distinguish performance. Other commenters noted that CRA examinations should be rigorous and should evaluate an institution's process for achieving performance, not just the results of lending, investment, and service activities.

Treatment of affiliate activities in CRA evaluations

Currently, for CRA evaluation purposes, the agencies may consider loans made by bank affiliates if requested by the IDI. Some commenters suggested that the agencies instead should consider affiliate activities when they have a significant impact on community needs. One commenter suggested a single evaluation at the holding company level that would include all CRA-covered subsidiaries.

Role of CRA in merger applications

Several community and consumer groups advocated that the CRA should play a more significant role in mergers, with consideration given to both past performance and future plans. A few commenters suggested specific steps the agencies could take to ensure that merging banks are attentive to community reinvestment matters, which they alleged can suffer in a merger situation. One commenter suggested that banks should be required to make public benefit commitments prior to merger approvals detailing how the expanded bank will invest in the community. One community commenter opposed expedited merger procedures for CRA reasons, and another community commenter favored making a merger approval contingent on an outstanding CRA rating. Another commenter suggested that when a large bank leaves a market by merging or closing branches, the bank should have a continuing obligation to serve that market.

CRA's consideration of neighborhood stabilization program (NSP) activities

Two commenters recommended that the CRA definition of ''community development'' continue to include NSP-related or similar activities. In 2010, the agencies revised their CRA regulations to consider NSP-eligible activities shortly after the temporary program was created by Congress and these CRA provisions are scheduled to sunset two years after the last date appropriated funds for the temporary program are required to be spent.

Limited-scope evaluation areas

Some commenters raised concerns about the negative impact of using limited-scope examination procedures in smaller cities and rural areas. These commenters suggested that the performance records of limited-scope assessment areas for each state be aggregated and weighted as one full-scope assessment area so that performance in these areas would have more weight on an institution's overall rating. Specifically, two commenters argued that this approach would boost consideration of performance in smaller cities and rural counties. A few commenters contended that limited-scope assessment areas do not receive meaningful evaluation, which harms smaller cities and rural counties because bank performance in these areas does not count at all or to a very small extent in the CRA rating.

Consideration of race and ethnicity

Two commenters suggested that race and ethnicity be an explicit consideration in evaluating an institution's CRA record. The commenters opined that if the CRA considered race, lenders would be less likely to engage in redlining and other racially discriminatory practices, which would lessen compliance costs for lenders and create a more robust and competitive lending market in minority communities.

Database of community development activities

One commenter urged the agencies to create a publicly available database of community development activities to help identify opportunities and needs for community development financing.

Additional comments

Two commenters also recommended that the agencies provide CRA consideration for financial education and similar programs regardless of the economic status of the recipients.

One commenter mentioned the burden associated with finding and receiving CRA consideration for worthwhile investment projects. The commenter suggested eliminating the investment test and instead having investments considered as a performance enhancement by the bank.

Two commenters opined that CRA's coverage should be expanded to include credit unions.

Agencies' Response

The agencies have revised the Interagency Questions and Answers Regarding Community Reinvestment (Interagency CRA Q&As), the primary vehicle for interagency CRA guidance, to address several topics, including some comments raised in the EGRPRA process.[73] Specifically, the recent revisions to the Interagency CRA Q&As made clarifications designed to improve the consistency of examinations across and within the agencies; reaffirm that community development activities conducted in the broader statewide or regional area that includes a bank's assessment area, but that do not benefit the bank's assessment area, will be considered (provided that the bank has been responsive to community development needs and opportunities in its assessment area(s)); add examples of the activities considered to meet the purpose test for qualifying economic development activities; distinguish between community development services and retail products tailored to meet the needs of LMI people; and add examples of qualifying community development loans, investments, and community development services to help illustrate the types of activities that are eligible for CRA consideration.

In addition to revising existing guidance, the agencies added new questions and answers that address how examiners determine the availability and effectiveness of alternative delivery systems, whether products and services are tailored to meet the needs of LMI areas and individuals, and how they weigh quantitative and qualitative evaluative criteria to evaluate community development services. Still other new questions and answers were added to explain what the agencies mean by the terms ''innovativeness'' and ''responsiveness'' in the context of CRA evaluations.

The agencies believe that this new guidance is responsive to many of the concerns raised by comments they received through the EGRPRA process and elsewhere. However, the agencies recognize that more can be done to improve the CRA evaluation process. To this end, the agencies are reviewing their current examination procedures and practices to identify policy and process improvements. The agencies also are developing new examination tools to support more rigorous performance evaluations, more nuanced understanding of performance context information, and more transparency in the written public evaluations of CRA performance. Moreover, the agencies understand the importance of providing additional examiner training with regard to CRA and are committed to working together to develop and deliver interagency training for the examination staff.

The agencies note that a number of the topics addressed by commenters might require a statutory change. First, the overall ratings that the agencies assign are dictated by statute and any changes would require a statutory amendment. Second, suggestions to expand CRA coverage to financial institution affiliates might require a statutory change. Finally, expanding the CRA's coverage to include other non-depository institutions and credit unions would also require a statutory amendment.

6. Bank Secrecy Act

Background

The BSA authorizes the Secretary of the Treasury to issue rules, in consultation with the appropriate federal banking agencies, requiring financial institutions to establish a BSA compliance program.[74] The BSA also authorizes the Secretary to issue rules requiring institutions to identify and report suspicious activity and to file various reports regarding currency transactions.[75] The Secretary has delegated to the FinCEN the authority to issue regulations implementing these requirements, which are set forth at 31 CFR Chapter X.

In addition, section 8(s) of the FDI Act,[76] provides that each appropriate federal banking agency must prescribe regulations requiring IDIs to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA.[77] The agencies' regulations implementing section 8(s) provide that IDIs must establish a BSA compliance program, including establishing and maintaining procedures to ensure and monitor their compliance with the BSA, and the regulations issued by Treasury set forth at 31 CFR Chapter X. On May 9, 2003 the agencies published in the **Federal Register**[78] an amendment to the BSA regulations, to require financial institutions to establish a customer identification program as a part of their BSA compliance program in accordance with regulations the agencies prescribed jointly with FinCEN implementing section 326 of the USA PATRIOT Act.[79] The customer identification program

[73] 81 FR 48506 (July 25, 2016).

[74] 31 U.S.C. 5318(h).

[75] 31 U.S.C. 5318(g) and 5313.

[76] 18 U.S.C. 1818(s).

[77] 31 U.S.C. 5311 et seq. (BSA). The agencies' regulations are set forth at 12 CFR 21, subpart C; 12 CFR 208.63; 12 CFR 326, subpart B; and 12 CFR 390.354.

[78] 68 FR 25109 (May 9, 2003).

[79] Public Law 107–56, codified at 31 USC 5318(l) and 31 CFR 1020.220.

must include reasonable procedures to verify the identity of any person seeking to open an account. In addition, the agencies have issued regulations requiring IDIs to file SARs with the appropriate federal law enforcement agencies and the U.S. Treasury, as required by the BSA and consistent with FinCEN's regulations.[80] Specifically, financial institutions must report known or suspected criminal activity, at specified thresholds, or transactions over $5,000 that they suspect involve money laundering or attempts to evade the BSA by filing a SAR.[81]

EGRPRA Comments

Approximately 40 commenters and outreach meeting participants addressed the BSA. Recurring BSA comments related to increasing the threshold for filing CTRs, the SAR threshold, the overall increasing cost and burden of BSA compliance, and increasing the number of months between examinations for smaller, non-complex banks. Additional comments included possible changes to BSA reporting, greater clarity regarding customer due diligence requirements and supervisory expectations, and BSA examination consistency.

Because FinCEN also has rules implementing the statutory SAR and BSA compliance requirements, any increases to the SAR filing threshold or changes to the BSA compliance program requirement would need to be a joint effort by FinCEN and the agencies.

Furthermore, all comments on the CTR form or on CTR reporting relate to FinCEN requirements and are outside the scope of the agencies' review of their regulations.[82] Accordingly, FinCEN rather than the agencies would need to make any changes related to CTRs. The agencies provided a detailed summary of the EGRPRA comments to the Department of the Treasury's Office of Terrorism and Financial Intelligence and FinCEN, and their response is included in appendix 5. Additionally, FinCEN has published information regarding how information submitted to them is used.[83]

Increase the reporting thresholds for CTRs and SARs

The majority of commenters discussing BSA requirements suggested that the $10,000 threshold for CTRs be raised. For the majority of the comments, the CTR threshold issue was the only BSA issue identified. Most of the commenters stated that the current CTR threshold has been in place since 1970, when Congress enacted the BSA, and that the $10,000 amount has not kept pace with inflation or the current way cash is used. Some commenters stated that increasing the threshold would reduce excess reporting and could make the reports more meaningful to law enforcement.

In addition, several commenters suggested that the agencies also review thresholds for SARs. Specifically, commenters noted that there are different thresholds for SARs depending on the subject identified and the nature of the activity, and these commenters suggested that the agencies should consider raising or calibrating thresholds depending on the activity. Many of the commenters mentioned that increasing the thresholds would decrease the number of filings for banks and, therefore, would reduce overall compliance costs and the amount of resources needed to comply with the BSA.

Costs and burdens of BSA compliance

Commenters on BSA-related regulations also noted the increasing cost and burden associated with complying with the BSA. A few commenters noted the high cost of software generally needed or expected to be used to comply with various aspects of the BSA. One commenter stated that automated systems are expensive and drain staff resources, noting that there is often a need to hire dedicated compliance staff to oversee the conversion to, and running of, the new system. Another commenter felt that too much time, attention, and resources are directed toward regulatory compliance instead of providing credit and financial services to the community. This commenter suggested tailoring changes to make BSA compliance more commensurate with the risk profile of institutions of all sizes. Another commenter, a trade association, suggested that law enforcement and regulators are shifting their responsibilities associated with BSA, AML, and U.S. Housing and Urban Development Department data collection onto bank staff.

Reducing the frequency of examinations for smaller, non-complex banks

The agencies are required under 12 USC 1818(s)(2) to include reviews of BSA compliance programs in their examinations of IDIs. Such reviews are performed during statutorily required on-site examinations of IDIs, generally on a 12- to 18- month cycle.[84] Several commenters addressed the possibility of extending the examination cycle from 12 to 18 months for well-rated, smaller, non-complex banks. While this issue is not specific to BSA, several comments did highlight the BSA examination frequency when discussing examinations in general.

Additional issues

Some commenters suggested additional changes to SAR and CTR requirements. For the SAR requirement, a few comments suggested changing the review period for reporting ongoing suspicious activity from 90 days to 180 days. Other commenters suggested the possibility of eliminating a SAR requirement for certain activities, such as structuring transactions to avoid CTR filings. Two comments state that certain courts have misinterpreted the SAR safe harbor to require disclosures be made in ''good faith.'' The commenters believe that failure by the agencies to clarify that a good faith standard is not required to qualify for the SAR safe harbor could increase uncertainty by banks to proactively file SARs. For CTRs, several commenters offered alternatives to filing a CTR on individual transactions. Three commenters suggested an aggregate filing and one other suggested bulk data downloads.

Some commenters discussed inconsistent approaches in BSA examinations. Although examiners follow the FFIEC BSA/AML Examination Manual,[85] commenters suggested a need for standard application of procedures.

A few comments addressed customer due diligence requirements. One commenter addressed the potential burden associated with a notice of proposed rulemaking issued by FinCEN that would require banks to obtain beneficial ownership information for legal entity customers. Two other commenters stated that customer due diligence requirements are becoming overly burdensome and noted that they feel like investigators instead of bankers.

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80 31 U.S.C. 5318(g); 31 CFR 1010.320.

81 12 CFR 21.11, 12 CFR 163.180(d), 12 CFR 208.62, 12 CFR 353, and 12 CFR 390.355.

82 See FinCEN regulation at 31 CFR 1010.310.

83 See for example, Prepared Remarks of FinCEN Associate Director for Enforcement, Thomas Ott, delivered at the National Title 31 Suspicious Activity & Risk Assessment Conference and Expo, August 17, 2016. *www.fincen.gov/news/speeches/prepared-remarks-fincen-associate-director-enforcement-thomas-ott-delivered-national.* See also SAR statistics contained in FinCEN's SAR Technical Bulletins at *www.fincen.gov/news-room/sar-technical-bulletins.*

84 See 12 U.S.C. 1820(d).

85 FFIEC BSA/AML Examination Manual.

Agencies' Response

The comments regarding the CTR threshold cannot be addressed through the EGRPRA process because changing this threshold would require an amendment to FinCEN's regulation at 31 CFR 1010.310. Similarly, an increase in the SAR threshold would require a change to FinCEN's regulation at 31 CFR 1010.320 as well as to the agencies' regulations.

With regard to the costs and burdens of BSA compliance, the high cost of software and the use of automated monitoring systems, the agencies expect banks to have effective BSA programs commensurate with their money laundering and terrorist financing risks. Accordingly, the sophistication of monitoring systems should be dictated by the bank's risk profile, with particular emphasis on the composition of higher-risk products, services, customers, entities, and geographies.

While existing regulations do not require banks to use automated systems, many U.S. banks use them to comply with the BSA due to their increased efficiencies, effectiveness, and the resulting human resource benefits and economies of scale. Banks that engage in lower-volume and lower-risk activities with low risk customers within the institution's geographic footprint are not expected to have automated systems but must have an effective BSA compliance program.

As discussed more fully above in section D.1., the agencies have acted to reduce the examination burden for smaller institutions. On February 29, 2016, the agencies issued an interim final rule that raised the asset threshold by which well-capitalized and well-managed IDIs are eligible for an expanded 18-month examination cycle. Specifically, the interim final rule raised the total asset threshold for eligible IDIs from less than $500 million to less than $1 billion. The agencies published the interim final rule as final and with no changes on December 16, 2016,[86] which means that IDIs that qualify for less frequent safety-and-soundness examinations also will be eligible for less frequent reviews of BSA program compliance.

The 90-day supplemental time to report continuing suspicious activity is set forth in FinCEN guidance and not in a regulation. FinCEN's guidance states that banks may continue to report an ongoing suspicious activity by filing a report with FinCEN at least every 90 calendar days. Subsequent guidance permits banks with SAR requirements to file SARs for continuing activity after a 90-day review with the filing deadline 120 calendar days after the date of the previously related SAR filing.[87] With respect to the comments on the SAR safe harbor, FinCEN notes in their response letter attached as appendix 5 that they provided language to Congress to amend the current safe harbor provisions. If enacted, FinCEN states in its response that it will work expeditiously to amend related implementing regulations.

The agencies also support promoting efforts to increase consistency in the application of examination procedures across the agencies through enhanced examiner training. The FFIEC BSA/AML Working Group meets regularly to share information among its members about various BSA/AML supervisory and policy matters, including significant issues, emerging concerns, member initiatives, and projects. In accordance with the charter of the BSA/AML Working Group, members strive to coordinate interagency efforts as appropriate to ensure consistent approaches across the different agencies charged with responsibilities for BSA/AML supervision, training, guidance, and policy. In addition, the FFIEC annually holds a BSA/AML Workshop and an Advanced BSA Specialists Conference for all FFIEC examiners to promote consistency in the examination process and highlight emerging trends and practices.

The agencies note that in May 2016, FinCEN issued final rules under the BSA to clarify and strengthen customer due diligence requirements for banks, credit unions, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.[88] The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. Any changes to these due diligence requirements would need to be made by FinCEN together with the agencies.

E. Other Agency Initiatives to Update Rules and Reduce Burden

During the EGRPRA process, the agencies jointly and individually undertook efforts to reduce regulatory burden on institutions that they supervise and regulate. These initiatives took various forms ranging from regulatory changes, streamlining of supervisory processes, and revisions of agency handbooks. These efforts collectively contributed to EGRPRA's main purpose of identifying outdated or otherwise unnecessary regulatory requirements on financial institutions and eliminating unnecessary regulations to the extent appropriate.

1. Interagency Initiatives

A. Disclosure and Reporting of CRA-Related Agreements ("CRA Sunshine")

Background

Section 48 of the FDI Act imposes disclosure and reporting requirements on IDIs with respect to certain agreements related to the CRA.[89] Specifically, this section requires that each IDI or affiliate must file, at least annually, a report with the appropriate federal banking agency detailing agreements made with nongovernmental entities or persons (NGEPs) pursuant to or in connection with the fulfillment of the CRA. This section also requires each party to an agreement to make available the entire agreement to the public and to the appropriate federal banking agency. In addition, section 48 requires each NGEP to file an annual report disclosing the use of any funds received pursuant to each agreement with the appropriate federal banking agency or with the relevant institution, which then must promptly forward the report to the agency. The agencies' implementing regulations also require IDIs and their affiliates to file quarterly reports with the appropriate federal banking agency disclosing all agreements entered into during that quarter.[90]

EGRPRA Comments

The agencies received three written comments on the CRA Sunshine rule, one from an industry trade association and two from community organizations. In addition, one participant and one audience member commented on the CRA Sunshine rule during the EGRPRA outreach sessions. The commenters either recommended total repeal of the reporting requirement or streamlining of the reporting requirements, which commenters viewed as burdensome.

Specifically, two community organization commenters recommended the repeal of the CRA Sunshine statute. Both organizations urged the agencies to use the EGRPRA process as an opportunity to acknowledge that the law imposes an unnecessary regulatory

[86] 81 FR 90949 (December 16, 2016).

[87] Refer to FAQs Regarding the FinCEN Suspicious Activity Report, Question #16.

[88] 81 FR 29398 (May 11, 2016).

[89] 12 U.S.C. 1831y. This section was added by section 711 of the Gramm-Leach-Bliley Act.

[90] The agencies' CRA Sunshine rules are set forth at 12 CFR parts 35, 207, and 346.

burden on banks and community organizations.

One community organization asserted that the provision was designed to discourage business partnerships between banks and community organizations. Another commenter similarly asserted that the disclosure, monitoring, and reporting requirements are draconian and intended to punish organizations for working on reinvestment matters.

Three community organizations and one industry trade association criticized the paperwork burden associated with the quarterly disclosure and annual reporting of CRA agreements. The industry trade organization commenter stopped short of calling for a complete repeal of the CRA Sunshine statute. Instead, this commenter recommended that the agencies eliminate the quarterly reporting requirement and limit disclosures to the annual reporting requirement. The commenter highlighted the burden associated with creating and providing both quarterly and annual reports; noting that the dual requirements are unnecessary, redundant, and time consuming for both the depository institution and the agencies' staff who must review the reports.

Agencies' Response

The agencies agree with the commenters that the quarterly and annual reporting of CRA-related agreements and the actions taken pursuant to those agreements are unduly burdensome on both financial institutions and the NGEPs that are parties to the agreements. Therefore, the agencies are considering whether to discontinue the quarterly reporting requirement, as quarterly reporting is not statutorily required.

B. Loans in Areas Having Special Flood Hazards

Background

Pursuant to the National Flood Insurance Act of 1968 [91] and the Flood Disaster Protection Act of 1973,[92] the agencies' flood insurance regulations [93] provide that a regulated lending institution (lender) may not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area (SFHA) in which flood insurance is available under the National Flood Insurance Program (NFIP), unless the building or mobile home and any personal property securing the loan is covered by appropriate flood insurance for the term of the loan. The statute and regulations also require lenders, or loan servicers acting on the lenders' behalf, to force place flood insurance if they determine at any time during the life of a covered loan that the secured property is not adequately insured. Furthermore, lenders are required to provide notice to borrowers and servicers of this flood insurance requirement as well as of the availability of private flood insurance in addition to the NFIP coverage. The agencies amended their rules to implement the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) [94] and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) [95] with respect to the escrow of flood insurance premiums, the force placement requirements, and an exemption to the mandatory purchase requirement for detached structures.[96] The agencies also recently proposed amendments to implement the Biggert-Waters Act's provisions on private flood insurance.[97]

The agencies received 13 comments from banking industry trade associations and regulated institutions on the agencies' flood insurance rules. Several commenters asked that the agencies provide more guidance to the industry on flood insurance requirements, particularly with respect to renewal notices for force-placed insurance policies, the required amount of flood insurance, and flood insurance requirements for tenant-owned buildings and detached structures. One commenter specifically requested that the agencies update their Interagency Flood Q&As [98] in light of recent statutory amendments to the flood insurance laws by the Biggert-Waters Act and HFIAA.[99]

Agencies' Response

The agencies agree with these EGRPRA commenters that additional agency guidance on flood insurance requirements would be helpful to the banking industry and that the Interagency Flood Q&As should be updated to address recent amendments to the flood insurance statutes. In fact, the agencies have begun work on revising the Interagency Flood Q&As to reflect the agencies' recently issued final rules implementing the Biggert-Waters Act and HFIAA requirements and to address other issues that have arisen since the last update in 2011. As part of this revision, the agencies also plan to address many of the flood insurance issues raised by EGRPRA commenters. The agencies note that in the past, the agencies have issued these Interagency Flood Q&As for notice and comment so that interested parties may provide input and request further clarification on the proposed Q&As.

C. Other Joint Agency Initiatives

The agencies also are taking action in a number of other areas where they received a more limited number of comments. These actions are described below.

Management Official Interlocks

In general, pursuant to the DIMIA,[100] agency regulations prohibit a management official of a depository institution or depository institution holding company from serving simultaneously as a management official of another depository organization if the organizations are not affiliated and both either are very large or are located in the same local area.[101]

The agencies received one comment letter regarding the DIMIA regulations, from a trade association. Among other things, the commenter suggested that the agencies update their regulations based on the asset thresholds in the major assets prohibition in 12 U.S.C. 3203. In general, this prohibition states that a management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such organizations) may not serve as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such organizations), regardless of the location of either organizations. The agencies agree with this comment and plan to propose amendments to their rules to update these thresholds. The agencies' DIMIA regulations specifically provide that the agencies will adjust the $2.5 billion and $1.5 billion thresholds "as necessary" based on inflation or market conditions, and the agencies have not adjusted these thresholds since the agencies implemented this provision in 1999. The agencies note that the current inflation adjusted thresholds would be $3.6 billion and $2.16 billion, respectively.

[91] Public Law 90–448, 82 Stat. 572 (1968).

[92] Public Law 93–234, 87 Stat. 975 (1973).

[93] 12 CFR part 22; 12 CFR 208.25 (Reg. H); 12 CFR 339.

[94] Public Law 112–141, 126 Stat. 916 (2012).

[95] Public Law 113–89, 128 Stat. 1020 (2014).

[96] 80 FR 43216 (July 21, 2015).

[97] 81 FR 78063 (November 7, 2016).

[98] 74 FR 35913 (July 21, 2009), as revised by 76 FR 64175 (October 1, 2011).

[99] These comments, as well as additional comments on the agencies' flood insurance rules, are summarized in detail in section F of the report.

[100] 12 U.S.C. 3201 et seq.

[101] 12 CFR part 26; 12 CFR part 212; 12 CFR part 238, subpart J; 12 CFR part 348.

Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements (Regulation O)

The Board's Regulation O [102] implements sections 22(g) and 22(h) of the Federal Reserve Act, which places restrictions on extensions of credit made by a member bank to an executive officer, director, principal shareholder, of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. Federal law also applies these restrictions to state nonmember banks, FSAs, and state savings associations. OCC and FDIC regulations enforce these statutory and regulatory restrictions with respect to national banks and FSAs, and to state nonmember banks and state savings associations, respectively.[103] Among other comments, a trade association suggested that the agencies create a chart that summarizes the rules and limits of Regulation O, as added guidance for the industry. The agencies believe that such a chart would be helpful to the industry and are working to provide a chart or similar guide either in an interagency issuance or a publication posted on their respective websites on the statutorily required rules and limits on extensions of credit made by an IDI to an executive officer, director, or principal shareholder of that IDI, its holding company, or its subsidiaries.

Cybersecurity and Information Technology Coordination

The agencies coordinate regulatory efforts on cybersecurity and information technology risks so as to ensure consistency in guidance and expectations of our institutions. For example, over the past two years the agencies published the FFIEC Cybersecurity Assessment Tool to assist institutions in identifying their risks and assessing their cybersecurity preparedness and have issued joint statements notifying institutions of matters such as risks associated with malware-based cyberattacks, distributed denials of service, and preparedness alerts to institutions. The agencies also issued revisions to the *FFIEC Information Technology Examination* handbook and provided webinars, outreach, and other resources to help institutions address cybersecurity threats and other IT risks.

[102] 12 CFR part 215.

[103] See 12 CFR part 31, 12 CFR 337.3, and 12 CFR 390.338.

2. Board Initiatives

During the EGRPRA review period, the Board has undertaken a number of initiatives to reduce unnecessary regulatory burden on the financial organizations it regulates and supervises. Such initiatives included revisions of various aspects of the Board's supervisory, regulatory, monetary policy, payments, and consumer protection rules, procedures, and guidance. In connection with its regulations and supervisory processes, the Board will continue to identify appropriate regulatory and supervisory revisions to reduce unnecessary burden while ensuring the safety and soundness of institutions, protecting the integrity of the financial payment systems, and safeguarding customer protections.

Initiatives Related to Supervision

A. Small BHC/SLHC Policy Statement

Background

On February 3, 2015, the Board invited comment on a proposed rule to expand the applicability of its Small Bank Holding Company Policy Statement (policy statement) and also apply it to certain savings and loan holding companies. Specifically, the proposed rule would have allowed bank holding companies and savings and loan holding companies with less than $1 billion in total consolidated assets to qualify under the policy statement, provided the holding companies also comply with certain qualitative requirements. At the time of the proposal, only bank holding companies with less than $500 million in total consolidated assets that met the qualitative requirements could qualify under the policy statement.

The Board issued the policy statement in 1980 to facilitate the maintenance of local ownership of small community banks in a manner consistent with bank safety and soundness. The Board has generally discouraged the use of debt by bank holding companies to finance the acquisition of banks or other companies because high levels of debt can impair the ability of the holding company to serve as a source of strength to its subsidiary banks. The Board has recognized, however, that localized small bank holding companies typically have less access to equity financing than larger bank holding companies and that the transfer of ownership of small banks often requires the use of acquisition debt. Accordingly, the Board adopted the policy statement to permit 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 statement contains several conditions and restrictions designed to ensure that small bank holding companies that operate with the higher levels of debt permitted by the policy statement do not present an undue risk to the safety and soundness of their subsidiary banks.

EGRPRA Comments

The Board received 11 comments on the proposed rule. Comments were submitted by financial trade associations, individuals associated with financial institutions, and a law firm that represents bank holding companies and savings and loan holding companies. While each commenter expressed general support for the proposed rule, some commenters recommended revisions to the proposed rule. For instance, one commenter expressed support for raising the asset threshold higher than $1 billion. Another commenter expressed support for the nonbanking and off-balance sheet activity requirements but suggested that the Board consider rescinding or revising the requirement relating to outstanding debt or equity securities registered with the Securities and Exchange Commission.

Board response

The Board approved a final rule in April 2015 raising the asset threshold of the Board's Small Bank Holding Company Policy Statement from less than $500 million to less than $1 billion and expanding its application to savings and loan holding companies. As a result, 89 percent of all bank holding companies and 81 percent of all savings and loan holding companies were covered under the scope of the policy statement. The policy statement reduces regulatory burden by excluding these small organizations from certain consolidated capital requirements. It also reduces the reporting burden associated with capital requirements by eliminating the more complex quarterly consolidated financial reporting requirements and replacing them with semiannual parent-only financial statements. As of issuance of the final rule, the policy statement covered approximately 414 additional bank holding companies and 197 saving and loan holding companies. In addition, raising the asset threshold allowed more bank holding companies to take advantage of expedited applications processing procedures.

B. Collection of Checks and Availability of Funds (Regulation CC)

Background

The Board received numerous comments related to the regulations governing collection of checks and availability of funds. Regulation CC was promulgated to implement the Expedited Funds Availability Act (EFAA).[104] The EFAA requires banks to (1) make funds deposited in transaction accounts available to their customers within certain time frames, (2) pay interest on interest-bearing transaction accounts not later than the day the bank receives credit, and (3) disclose their funds-availability policies to their customers.[105]

EGRPRA Comments

Many commenters suggested that the Board allow extended hold times for checks, in part, due to check fraud concerns. Several other commenters argued that the Board should modernize its hold periods, for example, by reducing the maximum hold period for nonproprietary ATM deposits and reducing the reasonable hold extension period for non-''on us'' checks to two business days. Many commenters suggested that Regulation CC should be amended to account for changes in technology such as remote deposit capture and mobile deposits. In addition, a few commenters argued that the concept of nonlocal checks is outdated and should be removed from Regulation CC.

Board response

The Board and the CFPB have joint rulemaking authority over subpart B of Regulation CC pertaining to funds-availability and disclosure provisions of the EFAA. The Board and CFPB will take the comments received relating to subpart B into account when making amendments in the future. In particular, the Board expects that provisions that are outdated and no longer applicable will be updated or removed accordingly.

In response to the comments received on the remaining subparts of Regulation CC, the Board will take these into account when considering future amendments to these provisions. Specifically, the Board has proposed to amend Regulation CC to reflect today's virtually all-electronic environment by amending check collection and return rules to create a regulatory framework for the collection and return of electronic checks. These proposed changes include defining the terms ''electronic check'' or ''electronic check return.'' The Board has received many comments in support of these newly defined terms as well as the proposal to apply existing check collection and return rules to electronic checks. Reflecting broad input by the industry, the Board believes its proposed changes reflect the modern environment and will encourage the remaining banks using paper to send and receive checks electronically instead.

C. Board Regulation II (Debit Card Interchange Fees and Routing)

Background

The Board received several comments from banks, retailers, community organizations, and others concerning Regulation II.[106] The majority of these comments concerned provisions in the regulation that cap the interchange fee that a debit card issuer with over $10 billion in consolidated assets may either charge or receive from a merchant for an electronic debit transaction.

Regulation II implements section 920 of the Electronic Fund Transfer Act (EFTA), which was added by the Dodd-Frank Act. Regulation II sets forth standards for reasonable and proportional interchange transaction fees (interchange fees) for electronic debit transactions, standards for receiving a fraud-prevention adjustment to interchange fees, exemptions from the interchange fee limitations, prohibitions on evasion and circumvention of the interchange fee limitations, and prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions. Specifically, Regulation II establishes a cap on the base level interchange fee that an issuer with consolidated assets of $10 billion or more may either charge or receive from a merchant for an electronic debit transaction. The regulation allows for a fraud-prevention adjustment to the cap on an issuer's debit card interchange fee if the issuer develops and implements policies and procedures reasonably designed to achieve the fraud-prevention standard set out in the regulation. Certain small debit card issuers, government-administered payment programs, and reloadable general-use prepaid cards are exempt from the interchange fee limitations. Regulation II also prohibits all issuers and networks from restricting the number of networks over which debit transactions may be processed to less than two unaffiliated networks and from inhibiting a merchant's ability to direct the routing of a debit transaction for processing over any payment card network that may process such transactions.

EGRPRA Comments

Interchange fee cap

Several commenters suggested that the cap on interchange fees has been effective in introducing transparency and competition in the debit card market. The commenters suggested that the fee cap has allowed merchants to accurately assess the fees they are charged for debit card transactions and pass any savings they receive to consumers. The commenters asserted that consumers have reaped benefits from these measures, particularly in industries with low profit margins. In these industries, the commenters said, companies have a greater economic incentive to pass cost savings to consumers. Some of these commenters also noted that the majority of banks are exempt from the cap on interchange fees, and thus, may continue to collect fees above the cap set forth in Regulation II.

Some commenters discussed whether the cap on interchange fees should be lowered or removed. Several commenters representing retail trade organizations suggested that, while merchants and consumers have realized some savings, the Board's current cap level offers issuers high profit potential, and as a result, has become a de facto floor. Some of these commenters suggested that the cost for accepting debit card transactions has continued to decline for issuers and, therefore, recommended a reduction in the cap. Some commenters also argued that the cap on interchange fees has resulted in a net-negative effect for consumers. Most of these commenters asserted that retailers do not have an economic incentive to pass their cost savings from lower interchange fees to consumers. Furthermore, some commenters contended that the cap has increased the cost of banking, as issuers have sought to offset losses in interchange fees by increasing the prices they charge consumers for banking services. Several commenters suggested that this outcome has increased the number of unbanked and underbanked individuals. For these and other reasons, several commenters argued that Congress should pass legislation that removes the cap on interchange fees under Regulation II.

Board response

In late 2016, the Board published a report containing summary information on costs incurred by issuers for 2015.

[104] Regulation CC, 12 CFR part 229.

[105] 12 U.S.C. 4001 et seq.

[106] 12 CFR 235.

This data as well as any other industry developments, will inform any future consideration by the Board as to whether changes to the interchange fee standard are appropriate.

Exemption to the cap on interchange fees for prepaid cards

The Board received several comments concerning the exemption to the cap on interchange fees for eligible prepaid cards. Commenters noted that banks subject to the cap, in an effort to conform their prepaid card products to the exemption, have eliminated features in the prepaid cards they offer consumers, including access to online bill payments. Several commenters argued that this outcome has impeded the functionality of prepaid fees offered by large banks, and as a result, has negatively impacted consumers with limited access to basic banking services.

As a solution, several commenters suggested that the Board redefine prepaid cards for purposes of the exemption under Regulation II, and remove certain criteria that impede the functionality of prepaid cards. They argued that a revision would be consistent with the Board's policy concerns relating to the exemption, since many of the prohibited features relating to the functionality of prepaid cards do not generate interchange fees, and therefore, would not allow banks to evade the cap under Regulation II. In addition, several commenters also suggested that the Board consider using the definition of ''prepaid accounts'' in the CFPB's proposed rule on prepaid accounts.

Board response

Under Regulation II, a prepaid card that provides access to the funds underlying the card through check, Automated Clearing House (ACH), wire transfer or other method (except when all remaining funds are provided to the cardholder in a single transaction) is not eligible for the exemption because such a prepaid card would function nearly in the same manner as a debit card. As stated in the preamble to the final rule, prepaid cards that provide access to underlying funds through alternative payment methods would not meet the requirements of section 920(a)(7)(A)(ii)(II) of the EFTA.[107] That section provides that an exempt prepaid card may not be issued or approved for use to access or debit any account held by or for the benefit of the cardholder.

[107] 76 FR 43394, 43438 (July 20, 2011).

Fraud prevention adjustment to the interchange fee standard

A commenter representing a retail organization suggested that, in light of the migration by U.S. card issuers to chip-enabled card technology intended to reduce fraudulent transactions, the Board should revisit the appropriateness of the fraud-prevention adjustment to the interchange fee standard under Regulation II. The commenter suggested that maintaining the fraud-prevention adjustment once chip-enabled cards have been widely adopted would allow issuers to charge interchange fees in excess of the reasonable costs they incur for electronic debit transactions.

Board response

In late 2016, the Board published a report containing summary information on fraud-prevention costs for 2015. This data, as well as any other industry developments will inform any future consideration by the Board as to whether changes to the fraud-prevention standard are appropriate.

Limitations on payment card restrictions

One commenter stated that Regulation II goes beyond the statutory requirement under section 920(b)(1)(A) of the EFTA. That section provides that an issuer shall not restrict the number of payment card networks on which an electronic debit transaction may be processed to fewer than two unaffiliated networks. The Board interpreted that section to require issuers to ensure that the debit cards they issue are enabled on at least two unaffiliated networks.[108] The commenter argued that the statutory provision does not require the Board to impose such an affirmative obligation on the issuer. The commenter suggested that the requirement imposes an economic burden on issuers, particularly smaller banks, and makes it more difficult for issuers and payment card networks to deploy innovative technologies or otherwise improve their services. The Board also received several comments in support of its interpretation. The commenters suggested that requiring at least two unaffiliated networks on each debit card increases competition among payment card network providers by allowing competitors to invest in technologies that increase the efficiency of transactions; they also suggested that it allows merchants to choose the most cost-effective route for processing a debit transaction.

[108] See paragraphs 7(a)–1 and 7(a)–5 of the commentary to Regulation II.

Board response

The Board addressed this concern in the preamble to the final rule. Some commenters had argued that the statute does not mandate a minimum number of payment card networks to be enabled on a debit card as long as an issuer or payment card network does not affirmatively create any impediments to the addition of unaffiliated payment card networks on a debit card. The Board stated that, by its terms, the statute's prohibition on exclusivity arrangements is not limited to those that are mandated or otherwise required by a payment card network. The Board stated that individual issuer decisions to limit the number of payment card networks enabled on a debit card to a single network or affiliated networks are also prohibited as a ''direct'' restriction on the number of such networks in violation of the statute.[109] The Board stated that to conclude otherwise would enable an issuer to eliminate merchant routing choice for electronic debit transactions with respect to its cards, contrary to the overall purpose of section 920(b) of the EFTA.[110]

D. Other initiatives

Initiatives related to the safety and soundness supervisory process

The Federal Reserve has developed various technological tools for examiners to improve the efficiency of both off-site and on-site supervisory activities, while ensuring the quality of supervision is not compromised. For instance, the Federal Reserve has automated various parts of the community bank examination process, including a set of tools used among all Reserve Banks to assist in the pre-examination planning and scoping. Central to this effort, the Federal Reserve uses forward-looking risk analytics and Call Report data to identify high- and low-risk community banks, allowing the Federal Reserve to focus its supervisory response on the areas of highest risk and reduce the regulatory burden on low-risk community banks. Additionally, the Board issued SR letter 16–8, ''Off-site Review of Loan Files,'' announcing the Federal Reserve's off-site loan review program to state member banks and U.S. branches and agencies of foreign banking organizations with less than $50 billion in total assets. Under the off-site loan review program, covered institutions have the option to have Federal Reserve examiners review loan files off site during full-scope or target

[109] 76 FR 43394, 43451 (July 20, 2011).

[110] Id.

examinations if they maintain electronic loan records and have invested in technologies that would allow Federal Reserve examiners to do so.

The Board has issued rules and guidance, and made program changes to clarify and tailor expectations surrounding certain aspects of the safety-and-soundness supervisory process. For example, the Board:

- Issued SR letter 16–4, ''Relying on the Work of the Regulators of the Subsidiary Insured Depository Institution(s) of Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of Less than $50 Billion,'' to reinforce and formalize the Federal Reserve's existing practice of relying on the work of IDI regulators when supervising consolidated holding companies with assets of less than $50 billion.
- Issued SR letter 16–11, ''Supervisory Guidance for Assessing Risk Management at Supervised Institutions with Total Consolidated Assets Less than $50 Billion,'' which sets forth an update to the Federal Reserve's supervisory guidance for assessing risk management at supervised institutions with less than $50 billion in total consolidated assets, and provides clarification on and distinguishes supervisory expectations for the roles and responsibilities of the board of directors and senior management for an institution's risk management.
- Revised the rule implementing the Dodd-Frank Act-required company-run stress testing for bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion and savings and loan holding companies with more than $10 billion in total consolidated assets.[111] The changes to the Board's rule provide additional flexibility with respect to required assumptions that these companies must include in their company-run tests and extend the amount of time that savings and loan holding companies have to perform and report test results. The Board eliminated its requirement that these covered companies use fixed assumptions regarding dividend payments and other capital actions over the planning horizon. The change in the rule allows these covered companies to incorporate their own capital action assumptions into their Dodd-Frank Act-required company-run stress tests. Further, the Board delayed the application of the company-run stress test requirements to savings and loan holding companies until January 1, 2017.
- Published for public comment a proposed rule to modify its capital plan and stress testing rules for large and noncomplex firms (e.g., bank holding companies and U.S. intermediate holding companies with total consolidated assets between $50 billion and $250 billion, on-balance sheet foreign exposure of less than $10 billion, and total consolidated nonbank assets of less than $75 billion). Under the proposal, large and noncomplex firms would no longer be subject to the qualitative assessment of the Comprehensive Capital Analysis and Review (CCAR).[112] The proposal would reinforce the Board's less stringent expectations for these less systemic firms, which are generally engaged in traditional banking activities.[113] The proposed rule would also reduce certain reporting requirements for large and noncomplex firms. Under the proposal, large and noncomplex firms would continue to be subject to the quantitative requirements of CCAR, as well as normal supervision by the Federal Reserve regarding their capital planning. The proposed rule would take effect for the 2017 CCAR.
- Collaborated with the FDIC, and the state banking agencies (coordinated through the Conference of State Bank Supervisors (CSBS)) to develop an information technology (IT) risk examination program (referred to as InTREx). In working together, the agencies are promoting the common goals of enhancing the identification and assessment of technology risks in financial institutions and ensuring these risks are properly addressed by management. This examination program provides supervisory staff with risk-focused and efficient examination procedures for conducting IT reviews and assessing IT and cybersecurity risks at supervised institutions. Further, under the InTREx program, comprehensive IT examinations are conducted at institutions that present the highest IT risks and more targeted IT examinations are conducted at institutions with lower IT risks. The InTREx program applies to state member banks with less than $50 billion in total assets and foreign banking organizations' U.S. branches and agencies with less than $50 billion in assets. This program also applies to certain bank holding companies and savings and loan holding companies with less than $50 billion in total consolidated assets.

The Board periodically reviews its existing supervisory guidance to assess whether the guidance is still relevant and effective. We completed a policy review of the supervision programs for community and regional banking organizations to make sure that these programs and related supervisory guidance are appropriately aligned with current banking practices and risks. The project entailed an assessment of all existing supervisory guidance that applies to community and regional banks to determine whether the guidance is still appropriate. As a result of this review, SR letter 16–9, ''Inactive Supervisory Guidance,'' was released to announce the elimination of 78 guidance letters that are no longer relevant.

Initiatives related to consumer compliance

The Board has taken several actions aimed at providing regulatory relief for its supervised financial institutions with regard to consumer compliance, which are discussed below.

The Board adopted a new consumer compliance examination framework for community banks in January 2014.[114] While we have traditionally applied a risk-focused approach to consumer compliance examinations, the new program more explicitly bases examination intensity on the individual community bank's risk profile, weighed against the effectiveness of the bank's compliance controls. In addition, we revised our consumer compliance

[111] 80 FR 75419 (December 2, 2015).

[112] CCAR evaluates the capital planning processes and capital adequacy of bank holding companies with $50 billion or more in total consolidated assets. In the current CCAR process, the Federal Reserve conducts a qualitative assessment of the strength of each firm's capital planning process in addition to a quantitative assessment of each firm's capital adequacy based on hypothetical scenarios of severe economic and financial market stress.

[113] See Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms,'' SR letter 15–18 (December 18, 2015), *www.federalreserve.gov/bankinforeg/srletters/sr1518.htm* (SR letter 15–18); Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms,'' SR letter 15–19 (December 18, 2015), *www.federalreserve.gov/bankinforeg/srletters/sr1519.htm* (SR letter 15–19).

[114] See the Board's Consumer Affairs (CA) letter 13–19 (November 18, 2013), ''Community Bank Risk-Focused Consumer Compliance Supervision Program'' *www.federalreserve.gov/bankinforeg/caletters/caltr1319.htm* and CA letter 13–20 (November 18, 2013), ''Consumer Compliance and Community Reinvestment Act (CRA) Examination Frequency Policy'' *www.federalreserve.gov/bankinforeg/caletters/caltr1320.htm.*

examination frequency policy at the same time to lengthen the time frame between on-site consumer compliance and CRA examinations for many community banks with less than $1 billion in total consolidated assets. These actions have increased the efficiency of our supervision and reduce regulatory burden on many community banks.

Initiatives related to the processing of applications

In 2010, the Board introduced an electronic applications filing system, ''E-Apps,'' an Internet-based system for financial institutions to submit regulatory filings. The introduction of E-Apps allowed firms and their representatives to file applications online, eliminating the time and expense of printing, copying, and mailing the documents. E-Apps is designed to ensure the confidentiality of the data and the identity of individual filers. This electronic tool is provided free of any fees to supervised institutions.

In 2014, the Board introduced a semiannual public report on banking applications activity regarding the applications filed by banking organizations and reviewed by the Board as of the most recent reporting period ending on June 30 and December 31 of each calendar year. The report aims to increase transparency about applications filings, while providing useful information to bankers to help them gain efficiency.

Communications and outreach to the industry

The Board continues to make special efforts to explain requirements that are applicable to community banks. The Board provides a statement at the top of each Supervision and Regulation letter and each Consumer Affairs letter that clearly indicates which banking entity types are subject to the guidance. These letters are the primary means by which the Federal Reserve issues supervisory and consumer compliance guidance to bankers and examiners, and this additional clarity allows community bankers to focus efforts only on the supervisory policies that are applicable to their banks.

The Federal Reserve also developed several platforms to improve our communication with community bankers and to enhance our industry training efforts. For example, we have developed two programs —''Ask the Fed'' and ''Outlook Live''— as well as the publication of periodic newsletters and other communication tools such as *Community Banking Connections, Consumer Compliance Outlook,* and *FedLinks*. These platforms highlight information about new requirements and examiner expectations to address issues that community banks currently face and provide resources on key supervisory policies.

The Board's Subcommittee on Small Regional and Community Banking Organizations has been encouraging research on community banking issues to inform our understanding of the role of community banks in the U.S. economy and the effects that regulatory initiatives may have on these banks. This effort includes co-sponsorship of an annual community banking research and policy conference, ''Community Banking in the 21st Century,'' along with the Conference of State Bank Supervisors (CSBS). Research discussion topics at past conferences have included community bank formation, behavior, and performance; the effect of government policy on bank lending and risk taking; and the effect of government policy on community bank viability.

3. Office of the Comptroller of the Currency Initiatives

The OCC has a broad-based, historical perspective on bank regulation and supervision, especially with respect to community banks. With this perspective in mind, the OCC is committed to updating its regulations, removing unnecessary regulatory requirements, and reducing regulatory burden where consistent with statutory requirements and the safety and soundness of, and fair access to financial services and fair treatment of customers by, national banks and FSAs. The OCC has in the past conducted various reviews of its regulations to meet this commitment. Furthermore, the OCC is cognizant of this commitment when issuing new rules, amending existing regulations, and examining and supervising institutions.

In particular, the OCC understands that regulations often disproportionately affect community banks and savings associations because of their different business models and more limited resources. For these smaller institutions, a one-size-fits-all approach to supervision and regulation may not be appropriate. Therefore, where statutorily permitted, the OCC tries to tailor its regulations to accommodate a bank's size and complexity by providing alternative ways to satisfy regulatory requirements, using regulatory exemptions or transition periods, and explaining and organizing its rulemakings so that community banks and savings associations can better understand the rule's scope and application.

EGRPRA affords the OCC yet another opportunity to update its rules and reduce unnecessary regulatory burden, especially for community banks. In light of the EGRPRA mandate and in response to many of the EGRPRA comments received, the OCC has taken the following actions prior to the end of the EGRPRA review process.

A. Regulatory Amendments

The OCC has acted to reduce burden on national banks and FSAs, including community institutions, prior to issuing this report by issuing two final rules amending regulations that further the goals of EGRPRA and that address suggestions made by EGRPRA commenters. These rulemakings also include amendments that address a recent OCC internal review of its rules that identified outdated or unnecessary provisions in addition to those suggested by EGRPRA commenters. As described below, the OCC plans to propose additional amendments to address other EGRPRA comments. Furthermore, the OCC has reduced regulatory burden and updated its regulatory requirements by integrating many of its national bank and FSA rules.

OCC licensing final rule

In May 2015, the OCC published a final rule revising national bank and FSA licensing rules (OCC licensing final rule) that included a number of amendments directly responsive to comments the OCC received through the EGRPRA process.[115] This final rule also reduced burden by simplifying OCC licensing procedures and removing outdated or unnecessary provisions. Furthermore, this final rule integrated the FSA licensing rules with those rules for national banks, thereby eliminating a number of unnecessary former OTS rules applicable to FSAs.

Among other things, this final rule:

- Makes available expedited processing procedures for a number of transactions, such as certain reorganizations to become a subsidiary of a BHC, fiduciary applications from eligible FSAs, and certain *de novo* FSA charters;
- Replaces the application process with a more expedited notice process for certain FSA business combinations;
- Removes and simplifies the public notice requirement for certain transactions;

[115] 80 FR 28346 (May 18, 2015).

- Simplifies the application process for conversions from an FSA to a national bank;
- Removes the requirement that a majority of a *de novo* savings association's board of directors must be representative of the state in which the association is located;
- Removes the requirement that an FSA shareholder meeting must be held in the state in which the association has its principal place of business;
- Removes the requirement for staggered terms for certain directors of FSAs; and
- Simplifies FSA charter and bylaw requirements.

OCC EGRPRA final rule

The OCC recently issued a second rule based in part on comments received through the EGRPRA process (OCC EGRPRA final rule).[116] Among other things, this final rule responds to EGRPRA comments by: (1) Removing the requirement for FSAs to notify the OCC before establishing a transactional website; (2) providing for the electronic submission of securities-related filings; (3) removing the requirement that a national bank make a copy of its collective investment fund plan available for public inspection at its main office during all banking hours; and (4) adjusting for inflation the asset threshold for mini-funds (a type of collective investment fund) from $1 million to $1.5 million.

This final rule also made a number of other changes to OCC rules to reduce regulatory burden and update regulatory requirements that go beyond addressing comments received from the EGRPRA process. Among other things, this final rule

- Simplifies certain business combinations involving federal mutual savings associations;
- Exempts national banks from the prior approval, notification, and certification requirements for certain changes to permanent capital;
- Clarifies national bank director oath requirements;
- Permits a national bank to deposit securities required to be pledged by a state with the Federal Home Loan Bank of which the bank is a member, in addition to the appropriate Federal Reserve Bank;
- Removes unnecessary reporting, accounting, and management policy provisions for FSAs;
- With respect to fidelity bonds:
  —Removes the requirements that FSAs: (1) maintain fidelity bonds for directors who also do not serve as officers or employees; (2) maintain fidelity bond coverage for any agent who has exposure to associations assets, instead providing that the association consider any such exposure when determining its amount of fidelity bond coverage; and (3) annually review the association's bond coverage; and
  —Permits a committee of the board of directors of an FSA to assess fidelity bond coverage instead of the entire board of directors.
- With respect to securities recordkeeping and confirmations
  —Replaces the more detailed procedures for record maintenance and storage for FSAs with the less burdensome requirements applicable to national banks;
  —Permits national banks to use a third party to provide record storage or maintenance;
  —Eliminates the requirement that a national bank send a copy of a securities transaction confirmation to a customer when such confirmation is sent by a registered broker/dealer, provided that an appropriate written compensation agreement exists with the customer; and
  —Provides that an FSA that has previously determined compensation in a written agreement with a customer does not need to provide a remuneration statement for each securities transaction with that customer;
- With respect to securities offering disclosure rules
  —Provides FSAs with the additional communication and registration/prospectus exemptions under SEC rules currently available to national banks;
  —Removes the FSA mandatory escrow requirement;
  —Increases the threshold for the application of the periodic reporting requirement for FSAs from associations with securities that are held of record by 300 or more persons to associations with total assets exceeding $10,000,000 and a class of equity security held of record by 2,000 or more persons; and
  —Removes the requirement for FSAs to file Securities Sales Reports with the OCC.

These changes take effect on April 1, 2017.

Additional regulatory changes to address EGRPRA comments

The OCC plans to propose additional regulatory amendments in one or more future rulemakings, or to revise licensing guidance, to address other EGRPRA comments as follows:

- *Financial subsidiaries.* A trade association stated that the OCC should clarify how to convert a financial subsidiary to an operating subsidiary. The OCC agrees that this clarification would be helpful and plans to add procedures for this transaction by either amending 12 CFR 5.39 or by adding this clarification to the OCC's Licensing Manual.
- *Fiduciary activities.* The OCC plans to consider further changes to its fiduciary rules to reflect additional EGRPRA comments. First, one commenter requested that the OCC provide additional flexibility with respect to the retention of fiduciary records. The OCC's current rule, 12 CFR 9.8(b), requires a national bank to maintain fiduciary records for a minimum of three years. The OCC agrees that it would be useful to consider better aligning this requirement with state statutes of limitations. Second, this commenter requested that the OCC expand the list of acceptable collateral in 12 CFR 9.10, which requires a national bank to set aside collateral for any non-FDIC-insured funds it holds awaiting investment or distribution. The OCC agrees that this list could be expanded and plans to amend this provision to allow other assets as determined appropriate by the OCC.
- *Employment contracts.* One commenter requested that the OCC eliminate 12 CFR 163.39, which sets forth specific requirements for employment contracts between an FSA and its officers or other employees. Although the OCC finds merit in retaining this rule, the OCC does agree that the requirement that an FSA's board of directors approve all employment contracts between the FSA and its officers and employees is overly burdensome. Therefore, the OCC plans to remove the requirement for board approval of employment contracts with all employees, and limit the approval requirement only to contracts with senior executive officers.

One commenter, a nonprofit organization, requested that the OCC permit national banks to adopt a benefit corporation or mission-aligned status, which requires directors to address the

[116] 82 FR 8082 (January 23, 2017).

concerns of all stakeholders, not just shareholders. The OCC plans to review whether such an option for national banks and FSAs would be appropriate, and if so, whether a regulatory change would be necessary to allow this status.

Integration of national bank and FSA rules

As a result of title III of the Dodd-Frank Act,[117] the OCC is integrating rules for national banks and FSAs into a single set of rules, where possible. The key objectives of this integration process are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and savings associations. These objectives are similar to those contained in the EGRPRA review.

To date, the OCC has completed the integration of many national bank and FSA rules.[118] In so doing, the OCC has updated provisions, eliminated numerous unnecessary regulatory requirements, and amended many rules to make them less burdensome to both national banks and FSAs. The OCC continues to review its rules and expect to issue additional integration proposals that would further modernize its rules and make them less burdensome to its regulated entities.

B. Legislative Proposals

The OCC has supported a number of legislative changes to reduce regulatory burden on financial institutions. First, the OCC advocated for an increase in asset size for the community bank examination cycle which, as indicated previously, President Obama signed into law as the FAST Act last year.[119]

Second, the OCC supports a community bank exemption to the Volcker rule. Specifically, in response to concerns raised by community institutions and issues that have arisen during its ongoing Volcker rule implementation efforts, the OCC drafted a legislative proposal to exempt from the Volcker rule banks with total consolidated assets of $10 billion or less. However, any community bank exception should reserve the OCC's authority to apply the Volcker rule to a community bank that conducts activities that would otherwise be covered by the rule if the OCC determines that the bank's activities are: (i) inconsistent with traditional banking activities; or (ii) due to their nature or volume, pose a risk to the safety and soundness of the bank. Such an exception would eliminate unnecessary burden for small banks while ensuring that the OCC is able to address the risks the Volcker rule sought to eliminate. Based on its analysis, the OCC estimates that this amendment could exempt more than 6,000 small banks, including small banks regulated by the OCC, from the requirement to comply with the regulations implementing the Volcker rule.

Third, the OCC has developed a proposal to provide FSAs with greater flexibility to expand their business model without changing their governance structure. Specifically, this proposal would authorize a basic set of powers that both FSAs and national banks can exercise, regardless of their charter. This would allow savings associations to adapt to changing economic and business environments and meet the needs of their communities without having to convert to a bank.

The OCC also supports four additional legislative changes recommended by EGRPRA commenters. First, one commenter recommended that Congress amend the shareholder requirement for subchapter S corporations, 26 U.S.C. 1361(b)(1). Subchapter S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Among other requirements, to be a subchapter S corporation, the entity may have no more than 100 shareholders. This commenter specifically requested that the number of allowable shareholders be increased from 100 to 200. The commenter noted that this change would better allow community banks to attract outside capital. The OCC supports this legislative amendment as it would provide additional flexibility to community banks.

Second, 12 U.S.C. 72 requires, among other things, that a majority of directors of a national bank must have resided in the state, territory, or District in which the bank is located, or within 100 miles of the bank, for at least one year immediately preceding their election and during their continuance in office. The Comptroller may waive this residency requirement. Two trade associations recommended that Congress update the ''representative'' requirement for directors of national banks because of the evolution of the market and the need for qualified directors. The OCC supports the removal of the residency requirement in section 72. Given advances in technology and their effect on both communication methods and banking in general, as well as the continued importance of identifying qualified directors, the OCC believes that there is no longer a need for an individual to reside within a close proximity to a bank to perform successfully as a director.

Third, 31 U.S.C. 5318(g)(3) provides a financial institution that files a SAR with a safe harbor from civil liability. However, as indicated by EGRPRA commenters and noted above, courts have disagreed with respect to whether a bank or bank official must have a ''good faith'' belief that a violation occurred before filing a SAR in order to qualify for the safe harbor. Commenters maintain that failure by the agencies to clarify that a good faith standard is not required to qualify for the SAR safe harbor could increase uncertainty and discourage banks from proactively filing SARs. The OCC was aware of this issue prior to the EGRPRA process and has actively supported and continues to support legislative proposals clarifying that a ''good faith belief'' that a violation occurred is not necessary to qualify for the SAR safe harbor.

Fourth, section 165(i)(2) of the Dodd-Frank Act requires certain financial companies, including national banks and FSAs, with more than $10 billion in total consolidated assets to conduct annual stress tests.[120] Two EGRPRA commenters requested that this stress testing threshold be increased. The OCC agrees with these commenters, and supports legislative efforts to increase this threshold from $10 billion to $50 billion. However, the OCC believes it is important to retain supervisory authority to require stress testing if warranted by a banking organization's risk profile or condition. Along with the Board and the FDIC, the OCC issued interagency stress testing guidance in 2012 applicable to banking organizations with more than $10 billion in total consolidated assets.[121]

[117] Public Law 111–203, 124 Stat. 1376 (2010). Among other things Title III transferred to the OCC all functions of the former OTS relating to FSAs.

[118] See 78 FR 37944 (June 25, 2013) (lending limits); 78 FR 62018 (October 11, 2013) (capital); 79 FR 29393 (May 16, 2014) (interagency rules); 79 FR 54518 (September 11, 2014) (safety-and-soundness standards); 79 FR 64518 (October 30, 2014 (flood insurance); 80 FR 28346 (May 18, 2015) (OCC licensing final rule); and 82 FR 8082 (January 23, 2017) (municipal securities dealers, Securities Exchange Act disclosures, securities offering disclosures, and insider and affiliate transactions).

[119] See Testimony of Toney Bland, OCC Senior Deputy Comptroller for Midsize And Community Bank Supervision, before the U.S. Senate Committee on Banking, Housing and Urban Affairs, September 16, 2014, *https://occ.gov/news-issuances/congressional-testimony/2014/pub-test-2014-124-written.pdf*.

[120] 12 U.S.C. 5365(i)(2)(A).

[121] Supervisory Guidance on Stress Testing for Banking Organizations with More than $10 Billion

This guidance did not implement, and is separate from, the stress testing requirements imposed by the Dodd-Frank Act. The OCC would continue to rely on this guidance and believes that stress testing can be a useful tool to analyze the range of a banking organization's potential risk exposures and capital adequacy.

Section 165(i)(2) also requires covered financial companies to disclose their stress testing results. One EGRPRA commenter noted that this disclosure requirement is particularly problematic for smaller banks and recommended that it be eliminated. The OCC notes that increasing the stress testing threshold to $50 billion would exclude banking organizations under $50 billion in assets from all Dodd-Frank Act stress testing requirements, including the requirement to disclose their stress testing results. However, if the statutory threshold in section 165(i)(2) is not increased to $50 billion, the OCC would support a separate legislative change exempting banking organizations with total consolidated assets between $10 and $50 ‘billion from the disclosure requirement.

In addition to legislative amendments requested by EGRPRA commenters, the OCC supports the following additional statutory changes that would reduce unnecessary regulatory burden and update the banking laws.

- *Stock ownership requirement.* In general, 12 U.S.C. 72 requires every director of a national bank to own capital stock in the bank, or its holding company, in a par value amount of not less than $1000 or an equivalent interest as determined by the OCC. Any director who ceases to be the owner of the required shares must vacate his position. The OCC recommends that Congress repeal this stock ownership requirement. The amount of $1000 does not represent a meaningful ownership stake, but the requirement can sometimes be a compliance burden, especially because there is no statutory waiver for this requirement.
- *Waiver of publication of notice of shareholders meetings.* Section 214a of Title 12 of the United States Code (conversions, mergers, or consolidations resulting in a state bank), 12 U.S.C. 215 (consolidation of banks resulting in a national bank), and 12 U.S.C. 215a (merger of banks resulting in a national bank) contain different provisions for waiver of the publication of notice to shareholders of the shareholder meeting and internally conflicting provisions regarding when the publication may be waived. The OCC recommends that Congress amend these provisions so that they contain the same notification requirements, to eliminate the technical issues, and to make these notification requirements less burdensome.
- *Shareholder actions.* Various statutory provisions specify that shareholders of a national bank must approve a permissible action at a meeting of the shareholders. For example, 12 U.S.C. 21a requires that shareholders must vote on amendments to the bank's articles of association at a meeting, 12 U.S.C. 71 provides for the election of directors by shareholders at a meeting, and 12 U.S.C. 214a(a), 215(a), 215a(a) provide that shareholders must vote to approve a merger (or a conversion of a national bank to a state bank) at a duly called shareholder meeting. The OCC recommends that Congress amend these statutes to permit shareholders to take action by means other than at a meeting, such as by mail or email, as permitted by many state corporation laws (such as New York and Delaware) and by the Model Business Corporation Act.
- *Savings association branching in the District of Columbia.* Section 5(m)(1) of the HOLA, 12 U.S.C. 1464(m)(1), requires savings associations to obtain the OCC's prior written approval before establishing or moving any branch in the District of Columbia or moving its principal office in the District of Columbia. No such prior approval is required for establishing or moving a savings association branch in any other jurisdiction. The OCC recommends that Congress remove this prior approval requirement.
- *OCC jurisdiction over District of Columbia-chartered savings associations.* The OCC recommends that Congress amend 12 U.S.C. 1466a, and elsewhere, to eliminate the authority of the OCC for savings associations chartered by the District of Columbia or state savings associations doing business in the District of Columbia. This change would be equivalent to the amendments made by section 8 of the ‘‘2004 District of Columbia Omnibus Authorization Act,‘‘ which removed the OCC's jurisdiction over banks established under the Code of Law for the District of Columbia and thereby treating District of Columbia banks the same as state chartered banks.

C. OCC Examination and Supervisory Process

In addition to regulatory changes, the OCC has incorporated into its examination process responses to comments received from bankers at EGRPRA and other outreach meetings. First, the OCC is further tailoring its Examination Request letter to remove redundant or unnecessary information national banks and FSAs are asked to provide to the OCC in the examination process.

Second, the OCC has directed its examiners to better plan examination work using on-site and off-site techniques while leveraging technology. These techniques offer more flexibility in determining which components of an examination can best be completed off site, unbundled as a separate smaller activity, or be included as part of a horizontal review. Many banks and savings associations now provide the majority of the information requested by the OCC electronically prior to their examination instead of in paper form. This approach allows bankers and the OCC to share information more securely and examiners to perform more analysis off site, lessening the disruption an examination may have on bank and savings association staff. The OCC has instructed its examiners to detail the specific techniques and practices that will be used in each examination activity in the individual bank supervisory strategies. Examiners must tailor the practices to the risk profile of the institution and OCC supervisory goals with a focus on minimizing the impact and disruption to bank staff.

Third, the OCC continues to stress the importance of effective communication and has set communication standards on supervisory products to ensure banks receive official communication of supervisory activities findings in a timely manner.

Fourth, the OCC is continuing to review its supervisory and examiner guidance to align it to current practices and risks and to eliminate unnecessary or outdated guidance. The OCC has eliminated approximately 125 outdated or duplicative OCC guidance documents and updated and/or revised approximately 25 OCC guidance documents since 2014.[122]

Furthermore, the OCC has published guidance to assist its regulated institutions, especially community banks, with new rules and policy, such as:

in Total Consolidated Assets, 77 FR 29458 (May 17, 2012).

[122] See *https://occ.gov/news-issuances/bulletins/rescinded/index-rescinded.html* for a list of rescinded OCC guidance documents.

- *A Common Sense Approach to Community Banking*—This booklet presents the OCC's view on how a board of directors and management can implement a common sense approach to community banking. It shares fundamental banking best practices that the OCC has found to prove useful to boards of directors and management in successfully guiding their community banks through economic cycles and environmental changes. The booklet focuses on three long-standing, underlying concepts: (1) accurately identifying and appropriately monitoring and managing a community bank's risks; (2) plotting a shared vision and business plan for a community bank with sufficient capital support; and (3) understanding the OCC's supervisory process and how a community bank may extract helpful information from this supervisory process.[123]
- *The Director's Book: Role of Directors for National Banks and Federal Savings Associations*—This document provides an overview of the OCC, outlines the responsibilities and role of national bank and FSA directors and management, explains basic concepts and standards for safe and sound operation of national banks and FSAs, and delineates laws and regulations that apply to national banks and FSAs.[124]
- *Mutual FSAs: Characteristics and Supervisory Considerations (OCC Bulletin 2014–35)*—In response to a recommendation from the members of the Mutual Savings Association Advisory Committee (MSAAC),[125] the OCC issued guidance in July 2014 to highlight unique characteristics and enhance understanding of mutual institutions.[126] This guidance has clarified expectations for both OCC examiners and mutual FSAs in risk assessments and in corporate governance. Specifically, the guidance describes the considerations examiners factor into the OCC's risk-based supervision process as they examine mutual FSAs, describes the mutual governance structure and mutual members' rights, outlines traditional operations of mutual FSAs, and identifies important structural and operational considerations in assessing risks at mutual FSAs. In particular, the guidance highlights distinctions in the areas of capital adequacy and earnings that supervisors and others should consider when examining mutual FSAs.

In the area of regulatory capital, as indicated above in section I.D., the OCC has published a number of documents to assist banks in their capital planning efforts, such as OCC Bulletin 2012–16, ''Capital Planning: Guidance for Evaluating Capital Planning and Adequacy.'' [127] In order to assist community banks in particular, the OCC published a quick reference tool, *New Capital Rule Quick Reference Guide for Community Banks.*[128] This document is a high-level summary of the aspects of the new rule that are generally relevant for smaller, non-complex banks that are not subject to the market risk rule or the advanced approaches capital rule. Additionally, the OCC intends to publish substantial revisions to its capital handbook so that the recent OCC guidance publications and the recent revisions to the OCC's capital regulations will be set forth and described in one place.

In addition, to assist community banks with new rules and guidance, the OCC has added a ''Note for Community Banks'' box to all OCC bulletins that explains if and how the new guidance or rulemaking applies to them. This box provides community banks with the information they need at the beginning of the guidance document so they know whether to expend any time or resources on the guidance.

D. Electronic Submission of Reports and Applications

Several comments received during the EGRPRA review process requested that the OCC permit national banks and FSAs to submit forms and reports to the OCC electronically. The OCC agrees that electronic filings are more efficient and less costly for national banks and FSAs, are more efficient for the OCC to review, and provide a quicker response time for banks and savings associations. The OCC currently permits the electronic filing of many of its required forms and reports though *BankNet,* the OCC's secure website for communicating with and receiving information from national banks and FSAs. As indicated above, the OCC's EGRPRA final rule permits national banks and FSAs to now file various securities-related filings electronically through *BankNet.* Furthermore, the OCC has developed a web-based system for submitting and processing Licensing and Public Welfare Investment filings called the Central Application Tracking System (CATS). Beginning in January 2017, the OCC began a phased rollout of CATS to enable authorized national bank and FSA employees to draft, submit, and track filings, and allow OCC analysts to receive, process, and manage those filings.

E. Industry Outreach, Training, and Other Resources

The OCC conducts numerous industry outreach and training activities that are particularly helpful to community banks. These outreach events promote awareness and understanding of the OCC's mission, objectives, policies, and programs; educate bankers on legal and regulatory requirements and agency processes; and enable OCC staff to obtain feedback from the banking industry, as well as consumer and community groups, on the issues that are important to them. This outreach consists of live events, webinars, conference calls or other virtual events, and participation at banking associations and industry conferences. Presentation materials, transcripts, and recordings of past events are available through *BankNet.*

In fiscal year 2016, the OCC participated in or hosted nearly 800 outreach events globally. In particular, the OCC conducted 36 Community Bank Director Workshops on issues such as compliance risk, credit risk, risk governance, and operational risk in various locations across the country with approximately 1,000 attendees. The OCC also staffed information tables at 22 industry association events, reaching over 10,000 attendees, where bankers could speak directly with OCC staff to ask questions, obtain information, or provide feedback on OCC requirements and processes. In addition, the OCC hosted over 1,000 bankers from 35 state banking associations at its Washington, D.C. headquarters and held four ''Meet the Comptroller'' meetings with bankers reaching approximately 64 attendees where bank staff could directly interact with senior OCC staff and learn more about OCC initiatives. In addition to

[123] *www.occ.gov/publications/publications-by-type/other-publications-reports/common-sense.pdf.*

[124] *www.occ.gov/publications/publications-by-type/other-publications-reports/the-directors-book.pdf.*

[125] The OCC established the MSAAC to provide advice to the Comptroller about mutual FSAs and to assess the current condition of mutual FSAs, regulatory changes that may promote mutual FSA health and viability, and other issues affecting these institutions. The committee includes officers and directors of mutual FSAs of all types, sizes, operating strategies, and geographic areas, as well as from FSAs in a mutual holding company structure.

[126] *https://occ.gov/news-issuances/bulletins/2014/bulletin-2014-35.html* (July 22, 2014).

[127] OCC Bulletin 2012–16 (June 7, 2012) *www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-16.html.*

[128] *www.occ.gov/news-issuances/news-releases/2013/2013-110c.pdf.*

providing compliance guidance to community banks, all of these events enable the OCC to receive continual feedback on its rules, policies, and processes, and to adjust its rules, policies, and procedures as appropriate.

The OCC also provides support for community banks though its online *BankNet* portal, which includes a wealth of information, resources, and analytical tools for national banks and FSAs, especially community institutions, on federal banking laws and regulations, OCC supervision, and industry trends. *BankNet* also contains a question and answer forum designed to facilitate communication between OCC-regulated institutions and the OCC that provides direct access to Washington, DC, and OCC senior management for answers to general bank regulatory and supervisory questions. In addition, *BankNet* contains a ''Director Resource Center,'' which collects information on OCC supervision most pertinent to national bank and FSA directors, and includes a ''Directors Toolkit'' for further assistance in carrying out the responsibilities of a national bank or FSA director.

F. Other Initiatives

Collaboration guidance

As it continually looks for ways to reduce community bank regulatory burden, the OCC also is studying other less conventional approaches to help community banks thrive in the modern financial world. One approach involves collaboration between community banks and is the subject of a paper the OCC published on January 13, 2015, titled *An Opportunity for Community Banks: Working Together Collaboratively.*[129]

The principle behind this approach, which grew out of productive and ongoing discussions between the OCC and its community banks, is that by pooling resources community banks can manage regulatory requirements, trim costs, and serve customers who might otherwise lie beyond their reach. The OCC already has seen examples of successful collaboration, such as community banks forming an alliance to bid on larger loan projects and banks pooling resources to finance community development activities. There are many other opportunities of this nature that can increase efficiencies and save money, including collaborating on accounting, clerical support, data processing, employee benefit planning, and health insurance. Other examples of potential collaboration between community banks could include using a shared resource to assist in a variety of basic elements of required BSA programs such as training and the development of effective policies and procedures. Sharing BSA resources could reduce regulatory compliance costs through efficiencies gained under such arrangements and, at the same time, assist depository institutions in meeting the requirements of the BSA and effectively manage the risk that illicit financing poses to the broader U.S. financial system.

The OCC is committed to encouraging these collaboration efforts to the extent they are consistent with applicable law and safety and soundness.

Another approach the OCC uses to help community banks thrive in the modern financial world involves sharing best practices for managing risk that the OCC has observed through its supervisory work. Such best practices are the subject of a bulletin issued by the OCC on October 5, 2016, titled, *Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking.*[130] This guidance focuses particularly on risk-management practices for foreign correspondent bank accounts, and describes corporate governance best practices for banks' consideration when conducting their periodic evaluations of risk and making account retention or termination decisions relating to foreign correspondent accounts.

The principle behind this approach is that by sharing observations of different methods some institutions are using to effectively manage risk, other institutions, and particularly community banks may have a roadmap for shaping their own risk controls that increases efficiencies and saves money. This guidance is designed to provide such efficiencies by communicating best practices observed by the OCC to aid all OCC supervised banks in developing practices suitable for conducting risk reevaluations of their foreign correspondent accounts. The OCC is committed to continuing to provide helpful guidance going forward that will reduce unnecessary burdens while maintaining safe and sound banking practices.

Fintech

Technological advances, together with evolving consumer preferences, are rapidly reshaping the financial services industry. While these changes are challenging traditional bank models, innovation can help community banks scale operations efficiently to compete in the future marketplace. In 2015, the OCC launched its initiative focused on financial innovation to better understand emerging industry trends and to develop a framework to support responsible innovation in the federal banking system. The OCC's framework, announced in October 2016, is designed to make certain that institutions with federal charters, in particular community banks, have a regulatory framework that is receptive to responsible innovation and supervision that supports it. The OCC also established an Office of Innovation where community banks can have an open and candid dialogue outside of the supervision process on innovation and emerging developments in the industry. When fully operational in 2017, the Office of Innovation will provide value to community banks through outreach and technical assistance to help community banks work through innovation-related issues and understand regulatory concerns early. The Office of Innovation also will assist banks in explaining regulatory expectations to the fintech companies with whom they partner. In addition, the Office of Innovations will share success stories, lessons learned, and hold ''office hours'' where bankers and others in the industry can consult OCC experts directly.

4. Federal Deposit Insurance Corporation Initiatives

The FDIC recognizes the regulatory burden facing banks and of the importance of achieving safety and soundness and consumer protection interests without imposing undue burden on the industry. As the primary federal regulator of the majority of community banks, the FDIC is especially aware of the effect of the costs of regulations on those banks, particularly smaller community banks and those located in rural communities. As described more fully below, in addition to specific changes made in response to written and oral comments received during the EGRPRA process and other outreach efforts, the FDIC has been engaged in a multiyear effort to review our supervisory processes to make them more efficient and to provide technical assistance and useful research and data to community bankers and their stakeholders.

[129] *www.occ.gov/publications/publications-by-type/other-publications-reports/pub-other-community-banks-working-collaborately.PDF.*

[130] See OCC Bulletin 2016–32 *www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html.*

A. Changes Made By FDIC in Response to EGRPRA Comments and Other Outreach Efforts

Rescinded enhanced supervisory procedures for de novo banks

In response to concerns raised in the EGRPRA process regarding FDIC procedures for monitoring *de novo* institutions, on April 6, 2016, the FDIC announced the rescission of FIL50–2009, *the Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions*, eliminating the seven-year monitoring period for *de novo* institutions.[131]

Clarified guidance on deposit insurance filings and provided technical assistance

Some EGRPRA commenters and others indicated that there was some confusion about the FDIC's existing policies on deposit insurance filings and suggested that a clarification of existing policies would be helpful. In November 2014, the FDIC issued guidance in the form of questions and answers to assist applicants in developing proposals for federal deposit insurance.[132] The guidance addresses four distinct topics: the purpose and benefits of pre-filing meetings, processing timelines, initial capitalization requirements, and business plan requirements. Then in April 2016, the FDIC issued additional guidance in the form of supplemental questions and answers regarding developing business plans in the deposit insurance application process.[133] Also in April 2016, the FDIC announced that subject matter experts have been designated in the FDIC regional offices to serve as points of contact for deposit insurance applications. Moreover, in 2016, three outreach meetings with the banking industry have been conducted to assist industry participants in understanding the FDIC's *de novo* application approval processes.[134] The FDIC also issued for public comment a handbook for organizers of *de novo* institutions, describing the process of applying for federal deposit insurance and providing instruction about the application materials required.[135] The FDIC is also expanding its existing internal procedures for reviewing and processing applications for deposit insurance and will make the final product available to the industry to provide additional transparency to the review process.

Eliminated most part 362 applications for LLCs

In November 2014, the FDIC issued new procedures that eliminate or reduce applications to conduct permissible activities (part 362 of the FDIC rules and regulations) for certain bank subsidiaries organized as LLCs, subject to some limited documentation standards.[136] The prior procedures dated back to the time when the LLC structure was first permitted for bank subsidiaries. Commenters in the EGRPRA process and during general outreach sessions remarked, and the FDIC agreed, that the LLC structure is no longer novel. Commenters also indicated that the approval process was too lengthy. When the FDIC eliminated the filing procedure in 2014, it was estimated that in the 10 previous years, the FDIC processed over 2,200 part 362 applications relating to bank activities. Since the vast majority of those involved subsidiaries organized as LLCs, the change in procedure will result in significant reductions in filing requirements going forward.

B. Clarified Capital Rules and Provided Related Technical Assistance

The agencies received many comments from community banks that are organized S-corporation banks and their shareholders regarding the capital conservation buffer. In response, in July 2014 the FDIC issued FIL–40–2014 to FDIC-supervised institutions that described how the FDIC would treat certain requests from S-corporation institutions to pay dividends to their shareholders to cover taxes on their pass-through share of bank earnings when those dividends are otherwise not permitted under the new capital rules.[137] The FDIC told banks that unless there were significant safety-and-soundness issues, the FDIC would generally approve those requests for well-rated banks. Further, to assist bankers in complying with the revised capital rules the FDIC conducted outreach and technical assistance designed specifically for community banks that included publishing a community bank guide; releasing an informational video on the revised capital rules; and conducting face-to-face informational sessions with bankers in each of the FDIC's six supervisory regions to discuss the revised capital rules applicable to community banks.[138]

C. Improving Communication with Bank Boards of Directors and Management

On July 29, 2016, in response to commenters who provided input during the EGRPRA review as well as matters identified by the Office of Inspector General in its February 2016 report,[139] the FDIC issued a series of guidelines to improve supervisory policies and practices to make them more transparent and easy-to-understand and to improve communication with directors and management of financial institutions.

- ***Enhancing the appeals process.*** The FDIC published for public comment a proposal to amend its *Guidelines for Appeals of Material Supervisory Determinations* so that institutions have additional avenues of redress with respect to these determinations and for greater consistency with the appeals processes of the other federal banking agencies. The comment period ended on October 3, 2016, and comments are being reviewed.[140]
- ***Updated guidance regarding communications with bankers.*** The FDIC updated and replaced FIL–13–2011, *Reminder on FDIC Examination Findings*, dated March 1, 2011, to re-emphasize the importance of open communications regarding supervisory findings.[141] An open dialogue with bank management is critical to ensuring the supervisory process is effective in promoting an institution's strong financial condition and safe-and-sound operation. The FDIC encourages bank management to provide feedback on FDIC supervisory activities and engage FDIC personnel in discussions

[131] FDIC FIL–24–2016: Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (April 6, 2016).

[132] FDIC FIL–56–2014: Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (November 20, 2014).

[133] FDIC FIL–24–2016: Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (April 6, 2016).

[134] FDIC Community Banking Initiative, *de novo* Outreach Meetings *www.fdic.gov/news/conferences/communitybanking/2016/DeNovo/index.html*.

[135] FDIC Press Release ''FDIC Seeking Comment on New Handbook for *De Novo* Organizers Applying for Deposit Insurance,'' December 22, 2016, *www.fdic.gov/news/news/press/2016/pr16110.html*.

[136] FDIC FIL–54–2014: Filing and Documentation Procedures for State Banks Engaging, Directly or Indirectly, in Activities or Investments That Are Permissible for National Banks (November 19, 2014).

[137] FDIC FIL–40–2014, Requests from S-Corporation Banks for Dividend Exceptions to the Capital Conservation Buffer (July 21, 2014).

[138] See the FDIC's website for a complete list of technical assistance resources related to regulatory capital, *www.fdic.gov/regulations/capital/index.html*.

[139] FDIC Office of the Inspector General, 2015 Annual Report, *www.fdic.gov/about/strategic/report/2015annualreport/2015AR__Final.pdf*.

[140] See 81 FR 51441 (August 4, 2016).

[141] See FDIC FIL–51–2016.

to ensure full understanding of the FDIC's supervisory findings and recommendations.

- ***Improved transparency regarding developing guidance and supervisory recommendations.*** The FDIC also issued two statements by the FDIC Board of Directors that set forth basic principles to guide FDIC staff in developing and reviewing supervisory guidance and in developing and communicating supervisory recommendations to financial institutions under its supervision.[142] The principles are intended to improve transparency in the supervisory process.

D. Electronic Submission of Reports

Several commenters during the EGRPRA process and in general outreach sessions indicated a desire to submit and receive reports to and from the FDIC in a secure electronic manner. Through FDIC*connect,* a secure, transactions-based website, the FDIC has provided alternatives for paper-based processes and allows the submission of various applications, notices, and filings required by regulation. There are 5,977 institutions registered to use FDIC*connect,* which ensures timely and secure access for bankers and supervisory staff, including state supervisors. Twenty-seven business transactions have been made available through FDIC*connect.* Most recently, capability was added that will permit voluntary electronic filings of audit reports required under Part 363.[143]

E. Burden-Reducing Changes to Examination and Supervisory Processes

On an ongoing basis, the FDIC looks for ways to change examination and general supervisory processes to improve efficiencies and minimize burdens on community banks. Below are a few concrete examples of initiatives in this regard.

- ***Improved pre-examination planning processes.*** The FDIC has implemented an electronic pre-examination planning tool for both risk management and compliance examinations that allows request lists to be tailored to ensure that only those items that are necessary for the examination process are requested from each institution to minimize burden. Receiving information ahead of time also allows examiners to review certain materials off site, reducing the on-site burden on bankers.
- ***Enhanced information technology examination processes.*** In June 2016, the FDIC updated its IT examination procedures to provide a more efficient, risk-focused approach.[144] The updated examination program includes a streamlined IT Profile that financial institutions will complete in advance of examinations that replaces the ITOQ. The IT Profile is intended to provide examination staff with more focused insight on a financial institution's IT environment and includes 65 percent fewer questions than appeared on the FDIC's legacy ITOQ. This enhanced program also provides a cybersecurity preparedness assessment and discloses more detailed examination results using component ratings.
- ***Reduced examiner guidance documents.*** During 2016, the FDIC reviewed approximately 650 examiner guidance documents and identified approximately 300 documents that are no longer needed. The FDIC is in the process of eliminating the outdated guidance as well as updating examiner guidance to align with current examination practices. Eliminating outdated guidance will help to ensure consistent examinations across regions and that all examinations are being conducted using current examination policies and procedures.
- ***Tested offsite loan review process.*** Piloted an automated process with certain Technology Service Providers to obtain standardized downloads of imaged loan files to facilitate offsite loan review, thereby reducing the amount of examiner time in financial institutions. The pilot is continuing with additional technology being developed by FDIC to enable the secure and simple transfer of files.
- ***Changed consumer compliance and CRA examination approach.*** The FDIC takes a forward-looking approach to supervision and has adopted supervisory strategies that focus on the risk of consumer harm in an institution's compliance management system. In November 2013, the FDIC revised its frequency schedule for small banks (those with assets of $250 million or less) that are rated favorably for compliance and have at least a Satisfactory rating under the CRA. Previously, small banks that received a Satisfactory or Outstanding rating for CRA were subject to a CRA examination no more than once every 48 to 60 months, respectively. Under the new schedule, small banks with favorable compliance ratings and Satisfactory CRA ratings are examined every 60 to 72 months for joint compliance and CRA examinations and every 30 to 36 months for compliance only examinations. This revised schedule has reduced the frequency of onsite examinations for community banks with satisfactory ratings.
- Subsequently, in April 2016, the examination frequency for the compliance and CRA examinations of *de novo* institutions and charter conversions was changed. As a result of the FDIC's supervisory focus on consumer harm and forward-looking supervision, the *de novo* period, which had required annual on-site presence for a period of five years was reduced to three years.
- ***Focused banker attention on applicable guidance and supervisory information.*** When communicating rules and guidance to the banking industry through Financial Institution Letters (FILs), the FDIC has a prominent community bank applicability statement so community bankers can immediately determine whether the content of the FIL is relevant to them. The FDIC has also created a regulatory calendar that alerts stakeholders to critical information as well as comment and compliance deadlines relating to new or amended federal laws, regulations, and supervisory guidance.

F. Community Bank Initiative—Technical Assistance and Enhanced Research and Data Regarding Community Banks

The FDIC is the primary federal supervisor for the majority of community banks, in addition to being the insurer of deposits held by all U.S. banks and thrifts. Accordingly, the FDIC has a particular responsibility for the safety and soundness of community banks, as well as a particular interest in, and commitment to, the role they play in the banking system and the challenges and opportunities they face. In 2009, the FDIC established the FDIC Advisory Committee on Community Banking to provide the FDIC with advice and guidance on a broad range of important policy issues impacting community banks throughout the

[142] See FDIC Governance—Statement of the FDIC Board of Directors on the FDIC's Code of Conduct (*www.fdic.gov/about/governance/conduct.html*) and Statement of the FDIC Board of Directors on the Development and Review of Supervisory Guidance (*www.fdic.gov/about/governance/guidance.html*).

[143] See FIL–71–2016, *Electronic Filing of Part 363 Annual Reports and Other Reports and Notices,* October 25, 2016. *www.fdic.gov/news/news/financial/2016/fil16071.html.*

[144] See FIL–46–2016: Information Technology Risk Examination (InTREx) Program. *www.fdic.gov/news/news/financial/2016/fil16043.html.*

country, as well as the local communities they serve, with a focus on rural areas. In 2011, the FDIC launched an initiative to study those challenges and opportunities and, where feasible, provide resources to community bankers to navigate the current environment. As part of the Community Bank Initiative, the FDIC completed the FDIC Community Banking Study, a data-driven effort to identify and explore issues and questions about community banks.[145] This study has been followed by a series of papers aimed at topics of importance to community banks, such as branching trends, closely held banks, efficiencies and economies of scale, community bank earnings, minority-owned banks, rural depopulation, and consolidation. The FDIC also created a section of the Quarterly Banking Report focusing exclusively on community bank performance. Most recently, in April 2016, the FDIC conducted a conference entitled, FDIC Community Banking Conference, Strategies for Long-Term Success that focused on successful community bank business models, key regulatory developments, opportunities and challenges in managing technology, and ownership structure and succession planning.

The FDIC has also provided greater technical resources to bank directors and management, including the establishment of a Directors' Resource Center on the FDIC website,[146] as a one-stop site for Directors to obtain useful and practical information to help them in fulfilling their responsibilities. Since 2013, the FDIC has issued over 25 technical assistance videos that provide in-depth, technical training for bankers to view at their convenience. The FDIC also offers additional technical training opportunities by hosting Directors' Colleges in each of its six regions. These Colleges are typically conducted jointly with state trade associations and address topics of interest to community bank directors and officers.

In 2016, the FDIC conducted 55 directors' colleges through its six regional offices. The FDIC has also held teleconferences and other training seminars with bankers to discuss new rules or emerging topics in the industry. In 2016, the FDIC conducted eight teleconferences for bankers covering such topics as accounting issues, Call Reports, and capital. In addition, the FDIC, in coordination with other bank regulatory agencies, conducted three interagency webinars for bankers covering such topics as CRA, overdraft program practices, and the Military Lending Act.

Also in 2016, the FDIC developed and distributed to all FDIC-supervised institutions a *Community Bank Resource Kit*, containing a copy of the FDIC's *Pocket Guide for Directors*, reprints of various *Supervisory Insights* articles relating to corporate governance, interest rate risk, and cybersecurity, two cybersecurity brochures that banks may reprint and share with their customers to enhance cybersecurity savvy, a copy of the FDIC's *Cyber Challenge* exercise, and several pamphlets that provide information about the FDIC resources available to bank management and board members.

G. Deposit Insurance Coverage

The FDIC receives thousands of calls each year on deposit insurance coverage by both consumers and bank employees. The FDIC regularly holds series of banker teleconferences to provide a better understanding of deposit insurance coverage. In April 2016, the FDIC revised the *Financial Institution Employee's Guide to Deposit Insurance (Guide)* that primarily is for bank employees.[147] The *Guide* includes comprehensive examples for the nine most-common deposit ownership categories and clarifies many misconceptions regarding deposit insurance coverage.

H. Enhanced Awareness of Emerging Cybersecurity Threats

The FDIC has conducted cybersecurity awareness outreach sessions in each of the FDIC's six regional offices and hosted a banker webinar to share answers to the most commonly asked questions. The FDIC also has developed cybersecurity awareness technical assistance videos to assist bank directors with understanding cybersecurity risks and related risk-management programs, and to elevate cybersecurity discussions from technical personnel to the board. The FDIC also developed and distributed to FDIC-supervised financial institutions *Cyber Challenge*, a program designed to help financial institution management and staffs discuss events that may present operational risks and consider ways to mitigate them.

I. OTS Rule Integration

Under section 316(b) of the Dodd-Frank Act, rules transferred from the OTS to the FDIC and other successor agencies remain in effect ''until modified, terminated, set aside, or superseded in accordance with applicable law'' by the relevant successor agency, by a court of competent jurisdiction, or by operation of law. When the FDIC republished the transferred OTS regulations as new FDIC regulations applicable to state savings associations, the FDIC stated in the **Federal Register** notice that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them. This process began in 2013 and continues, involving publication in the **Federal Register** of a series of proposed and final rulemakings. The FDIC has removed 16 transferred OTS rules and has issued one notice of proposed rulemaking to remove Minimum Security Procedures while making technical amendments to related FDIC rules for applicability to state savings associations.[148] The FDIC will continue its evaluation of the remaining 14 transferred regulations. Below are three examples of how the FDIC streamlined and clarified regulations through the OTS rule integration process.

- ***Repeal and remove 12 CFR part 390 subpart L, electronic operations.*** On November 27, 2015, the final rule to repeal and remove 12 CFR part 390 subpart L, Electronic Operations became effective.[149] This rule required state savings associations to file a written notice with the FDIC at least 30 days before establishing a transactional website. The FDIC had no corresponding rule for other FDIC-supervised institutions that required IDIs to notify the respective agency if they intend to establish transactional websites.[150] Rescinding and removing the Electronic Operations rule served to eliminate an obsolete and unnecessary regulation.
- ***Recordkeeping and confirmation requirements for securities transactions.*** On December 10, 2013, the FDIC issued a final rule that amended part 344 to increase the threshold for Small Transaction Exceptions applicable to all FDIC-

[145] See FDIC Community Banking Study Reference Data, *www.fdic.gov/regulations/resources/cbi/data.html*.

[146] FDIC Directors' Resource Centers, *https://fdic.gov/regulations/resources/director/index.html*.

[147] FDIC FIL–30–2016: Updated Financial Institution Employee's Guide to Deposit Insurance: Latest Version Includes Multiple Examples to Better Understand Deposit Insurance Ownership Categories (April 27, 2016).

[148] 81 FR 75753 (November 1, 2016).

[149] See 80 FR 65612 (October 27, 2015).

[150] As indicated in section E of this report, the OCC EGRPRA final rule removes this transactional website notice requirement. See 80 FR 8082 (January 23, 2017).

supervised institutions effecting securities transactions for a customer from an average of 200 transactions to 500 transactions per calendar year over the prior three-year period while removing part 390, subpart K (formerly OTS part 551), which governs recordkeeping and confirmation requirements for securities transactions effected for customers by state savings associations.[151] The threshold for part 390, subpart K's Small Transaction Exception was an average of 500 or fewer transactions over the prior three calendar-year period. Increasing the threshold for the Small Transaction Exception recognizes that the volume of securities activities of FDIC-supervised depository institutions has increased over the three decades since the FDIC established the original scope of the Small Transaction Exception and ensures parity for all FDIC-supervised institutions. The final rule became effective on January 21, 2014.

- ***Filing requirements and processing procedures for changes in control.*** In October 2015, the FDIC approved a final rule that amends part 303 of the FDIC Rules and Regulations for filing requirements and processing procedures for notices filed under the Change in Bank Control Act (notices).[152] The final rule consolidated into one subpart the requirements and procedures for notices filed with respect to state nonmember banks and state savings associations and eliminated part 391, subpart E. The final rule also adopted certain practices of related regulations of the OCC and the Board. The final rule clarifies the FDIC's requirements and procedures based on its experience interpreting and implementing the existing regulation.

J. Legislative Proposal

Section 165(i)(2) of the Dodd-Frank Act requires certain financial companies, including state nonmember banks and state savings associations, with more than $10 billion in total consolidated assets to conduct annual stress tests.[153] Two EGRPRA commenters requested that this stress testing threshold be increased. The FDIC agrees with these commenters, and supports legislative efforts to increase this threshold from $10 billion to $50 billion. However, the FDIC believes it is important to retain supervisory authority to require stress testing if warranted by a banking organization's risk profile or condition. Along with the Board and the OCC, the FDIC issued interagency stress testing guidance in 2012 applicable to banking organizations with more than $10 billion in total consolidated assets.[154] This guidance did not implement, and is separate from, the stress testing requirements imposed by the Dodd-Frank Act. The FDIC would continue to rely on this guidance and believes that stress testing can be a useful tool to analyze the range of a banking organization's potential risk exposures and capital adequacy.

Section 165(i)(2) also requires covered financial companies to disclose their stress testing results. One EGRPRA commenter noted that this disclosure requirement is particularly problematic for smaller banks and recommended that it be eliminated. The FDIC notes that increasing the stress testing threshold to $50 billion would exclude banking organizations under $50 billion in assets from all Dodd-Frank Act stress testing requirements, including the requirement to disclose their stress testing results. However, if the statutory threshold in section 165(i)(2) is not increased to $50 billion, the FDIC would support a separate legislative change exempting banking organizations with total consolidated assets between $10 and $50 billion from the disclosure requirement.

F. Rule by Rule Summary of Other EGRPRA Comments

In addition to the comments raising significant issues addressed in section D of this report, the agencies received other comments pertaining to the rules published for comment. A summary of these comments, organized by rule in each of the 12 categories, is set forth below. The comments are summarized in each category first by interagency rules, then by agency-specific rules. The agencies note that although the agencies published all of their rules (aside from rules that only affect agency internal processes), some of these rules did not generate any public comments.

1. Applications and Reporting

Interagency Regulations or Regulations Implementing the Same Statute

A. Bank Merger Act

In general, the Bank Merger Act[155] and the agencies' implementing regulations require the prior written approval of the FDIC whenever IDIs want to merge, consolidate, assume liabilities, or transfer assets from or with a noninsured depository institution.[156] The statute also requires the prior written approval of the appropriate federal banking agency before any IDI may merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another IDI. The agencies received two comment letters and a number of comments from outreach meeting participants on the Bank Merger Act application process. Several commenters suggested that the agencies change how they process applications under the Bank Merger Act, including specific requests that the agencies process applications more rapidly or increase the number of institutions that qualify for expedited processing of their applications. Yet other commenters suggested that the Bank Merger Act's comment period is too short and that the expedited merger process should be eliminated. Commenters also suggested that the agencies make definitions more uniform. Other commenters questioned how the agencies consider banks' CRA records or suggested that the agencies develop a faster process of reviewing the appeals of decisions made under the Bank Merger Act. These comments are discussed in more detail, below.[157]

Uniform definitions of "eligible" financial institutions

Two trade associations suggested that the agencies adopt a uniform definition of an institution eligible for expedited

[151] See 78 FR 76721 (December 19, 2013).

[152] See 80 FR 65889 (October 28, 2015).

[153] 12 U.S.C. 5365(i)(2)(A).

[154] Supervisory Guidance on Stress Testing for Banking Organizations with More than $10 Billion in Total Consolidated Assets, 77 FR 29458 (May 17, 2012).

[155] Section 18(c) of the FDI Act (12 U.S.C. 1828(c)).

[156] The agencies' implementing regulations for the Bank Merger Act are set forth at 12 CFR 5.33; 12 CFR 262.3 (processing and notice); 12 CFR part 225, subpart B; 12 CFR part 303, subpart D; 12 CFR part 390, subpart E. The OCC integrated its Bank Merger Act regulation transferred from the OTS, so that 12 CFR 5.33 now applies to both national banks and FSAs. See discussion of the OCC licensing final rule in section E.3 of this report.

[157] The OCC notes that many of these comments are discussed in the preamble to the OCC licensing final rule. The OCC issued the proposal for this rulemaking during the start of the EGRPRA process and issued the final rule in May 2015. When the OCC published this proposed rule, the OCC noted that it also would consider any EGRPRA comments received on part 5 when finalizing the proposal. This rulemaking is discussed in more detail in section E.3. of this report.

processing. The commenter asserted that this would provide greater clarity and reduce regulatory burden.

Appeals process for Bank Merger Act applications

One commenter recommended that the appeals process take place earlier in the applications process.

More expedited processing of mergers

Several trade associations and institutions stated that there is a need for more expedited processing of mergers because the process is cumbersome, noting that sometimes financial institution employees leave jobs because of the uncertainty. Bankers expressed concern that banks' applications for an acquisition, merger, or change of control are often delayed for extended periods of time, stating that sometimes the applications are not accepted as complete. They also stated that many delays often result from a single protest letter by a community group. One commenter suggested increasing asset thresholds associated with expedited processing, with a particular recommendation to increase the $7.5 billion threshold in 12 CFR 225.14 to $10 billion and to index it. Other commenters suggested expediting mergers for banks that are well capitalized with high CAMELS ratings and satisfactory CRA ratings.

Less expedited processing of mergers

Several commenters representing community or veterans' organizations suggested that mergers need to be carefully considered to make sure CRA considerations are addressed and that the statutory convenience and needs factor is satisfied before approval is granted. One commenter suggested that the Bank Merger Act's 30-day comment period is too short to allow people to navigate regulatory Web sites and legal notices to determine when a merger is contemplated and whether it affects their communities. Another commenter suggested that the expedited merger process should be eliminated so that no bank can merge without explicitly outlining the public benefits resulting from the merger.

Consideration of CRA in mergers

A commenter representing community groups stated that banks should have to demonstrate a record of strong community development, not just a satisfactory rating or above on the most recent CRA exam, and be required to demonstrate a clear public benefit to both the current and the expanded assessment areas, ideally in conjunction with a formal CRA agreement with the local community. Another commenter recommended that regulators should conduct interviews and public hearings to evaluate how community needs are being and will be served in a merger, in addition to accepting public comments. In addition, a commenter noted that, in the context of mergers, regulators should consider that banks that focus on online banking and ATM access do not rebuild communities the way brick-and-mortar operations do. Comments from banks and their trade associations suggested that a bank should be judged by its most recent CRA exam, or by other clear objective standards. One commenter stated that requiring public hearings and interviews would be tremendously expensive and time-consuming.

Delegated approvals for acquisitions and mergers

Several banks suggested that the agencies delegate more approval decisions to the appropriate regional office, rather than making the decision at headquarters.

Office closings as a result of mergers

Two bank trade associations recommended that the agencies be required to balance consideration of office closings with consideration of an institution's use of alternative technologies to serve customers in assessing convenience, needs, and CRA factors as part of mergers.[158]

Consideration of the ratio of loans to deposits in processing of mergers

One commenter representing a veterans' organization suggested that when out-of-state banks merge with California banks, the ratio of loans to deposits should be relatively equitable when compared to the ratio prior to the merger.

Public notice provisions

One commenter suggested amending the regulations to allow alternative forms of public notice, not just the newspaper notice required by 12 U.S.C. 1828(c)(3)(D), given advances in technology and communications.[159]

Herfindahl-Hirschman Index

One commenter suggested that the Herfindahl-Hirschman Index (HHI index) is not an appropriate metric for measuring the effect on competition of applications by small banks in rural areas. Another commenter suggested that the HHI index is outdated and does not consider new innovations and trends in the banking industry.

B. Change in Bank Control

The Change in Bank Control Act (CBCA) requires that the acquisition of control of any IDI by any person (either individually or acting in concert with others) be subject to prior notice and non-disapproval by the primary federal regulator of the institution to be acquired.[160] The agencies received two comment letters from trade associations and several comments from outreach meeting participants on the agency's CBCA rules.[161] Several commenters suggested that changes be made in how the agencies process notices under the CBCA, including specific requests that the agencies process notices more rapidly or limit the processing period by ceasing to ask for additional information. Commenters also recommended that the agencies revise or provide additional guidance in several specific regulatory areas to alleviate regulatory burden. Other commenters questioned definitions used for provisions in the regulations or asked for a process by which the agencies could issue binding interpretations determining when a filing is not required.[162] These comments are detailed below.[163]

Definitions of "acting in concert" and "immediate family"

Two trade associations and a banker asserted that the agencies should use uniform definitions of "acting in concert" and "immediate family." These commenters also stated that the presumption that two or more institutions that acquire 10 percent or more of a bank's stock are acting in concert makes it more difficult for some

[158] The agencies note that the recently issued Interagency CRA Q&As provide additional guidance on how agency examiners evaluate alternative systems for delivering retail banking services. 81 FR 48505 (July 25, 2016).

[159] The agencies note that regulations do not prohibit an institution from providing alternative forms of public notice, such as on its Web site, in addition to newspaper publication.

[160] 12 U.S.C. 1817(j).

[161] The agencies CBCA rules are set forth at 12 CFR 5.50; 12 CFR part 225, subpart E (Reg. Y); 12 CFR part 238, subpart D; 12 CFR part 303, subpart E; 12 CFR part 308, subparts D and E; 12 CFR part 391, subpart E.

[162] The FDIC issued a final rule on December 16, 2015, that among other things consolidates and conforms the change in control regulation and guidance transferred from the OTS. See FIL-60-2015 (announcing Final Rule Amending the Filing Requirements and Processing Procedures for Changes in Control). The OCC also has integrated its change in control regulation transferred from the OTS, so that 12 CFR 5.50 now applies to both national banks and FSAs. See discussion of the OCC licensing final rule in section E.3 of this report.

[163] As indicated above, many of these comments are discussed in the preamble to the OCC licensing final rule, discussed in more detail in section E. 3. of this report.

institutional investors to enter the market, thus impairing community banking.

Limiting requests for additional information

One commenter advocated for establishing a cut-off date beyond which regulators cannot ask for more information about a notice of change in bank control. The commenter noted that keeping the timeframe running indefinitely by stating that the filing is not informationally complete delays the transaction and creates uncertainty.

Binding interpretations

One commenter stated that banks should be able to ask for a binding interpretation of what constitutes a change in control so they know when filing is necessary.[164]

Definition of acceptance of application for change in control filings

A banker stated that there is no clear definition of what the acceptance of an application means, and that there needs to be more transparency about what is required and more honesty about delays.

Speed of processing

One commenter asserted that a change of control notice should be approved within 30 days because it is usually a response to a capital issue that needs to be addressed quickly.

Reduction in the burden of change of control filings

One commenter stated that, although not required by Board regulations, banks are required to follow a change in control rule every time even one single share changes hands. The commenter stated that this is tremendously expensive and time-consuming and that it would make sense if there were a threshold, in that reporting would be required if 5 or 10 percent of shares changed hands within the control group.

C. Notice of Addition or Change of Directors

Section 914 of FIRREA requires certain institutions to notify the appropriate federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution and provides the appropriate federal banking agency with the authority to disapprove the proposed individual on the basis of the individual's competence, experience, character, or integrity.[165] The agencies each have promulgated regulations pursuant to section 914.[166]

Two banking trade associations addressed the agencies' section 914 rules. The commenters suggested that the agencies amend their respective regulations to adopt uniform definitions of key terms, notice requirements, and appeals provisions. The commenters also suggested that the agencies adopt a common question and answer format for their respective regulations. These comments are detailed below.

Uniform definitions of ''Director'' and ''Senior Executive Officer''

The commenters noted that the agencies' regulations do not include uniform definitions of ''director'' and ''senior executive officer.'' The commenter suggested that the agencies amend their regulations to adopt uniform definitions.

Uniform prior notice requirement for changes in directors or senior executive officers

One commenter asked the agencies to adopt a common time period for which an institution must provide prior notice before adding or replacing a director or senior executive officer. The commenter recommended that the agencies uniformly require 30 days prior notice.[167]

Appeals of a section 914 notice

One commenter noted that the agencies' regulations are not uniform in providing for a procedure to appeal the disapproval of a FIRREA section 914 notice. The commenter recommended that each agency include an appeal provision in its regulation.[168]

Adopt a question and answer format for the changes in directors and senior executive officers regulation

One commenter recommended that the agencies each adopt a question and answer format for its section 914 regulation similar to the format adopted by the former OTS for this regulation.

D. General Comments on Application Process

A number of commenters suggested changes or offered opinions on the application process that apply more generally to the agencies' application processes and not necessarily to an interagency rule.

One commenter, a community group, asserted that information about applications subject to public comment on agency Web sites is hard to find and difficult to understand and that community groups often experience delays in receiving important communications, such as acknowledgement of the receipt of their comments and decisions regarding extension of the comment period.

One commenter, a bank, expressed a need for more guidance on the business planning process. The commenter stated that there needs to be very clear direction and specific guidance on what constitutes a deviation from the business plan, and what resulting actions need to occur by the bank if there is a deviation. This commenter also stated that the agencies should provide more guidance about the approval process for these planned or unexpected deviations from the business plan.

One commenter, a community group, suggested that the agencies should employ conditional approvals for applications to ensure that public benefits are realized.

One commenter suggested that the agencies should expand the examination procedures for branch closings to give significant weight to CRA considerations and discount the use of census tracts for rural communities.

Board Regulations

Holding companies—formations, acquisitions and nonbanking activities

The Board received comments on various aspects of its regulations related to applications and reporting.[169]

[164] With respect to the OCC, national banks and FSAs can, and often have, asked OCC staff for a legal opinion or interpretation of the statute and regulation regarding whether a change in control filing is required in the facts and circumstances described in the request.

[165] 12 U.S.C. 1831i.

[166] 12 CFR 5.51; 12 CFR part 225, subpart H (Reg. Y); 12 CFR part 303, subpart F; 12 CFR 390.360–.368; 12 CFR part 225, subpart H; 12 CFR 238, subpart H. The OCC has integrated its regulation relating to changes in directors or senior executive officers transferred from the OTS, so that 12 CFR 5.51 now applies to both national banks and FSAs. See discussion of the OCC Licensing final rule in section E.3 of this report.

[167] The preamble to the OCC licensing final rule discusses this comment.

[168] As discussed in the preamble to the OCC final licensing rule, the OCC rule includes an appeals process for section 914 decisions with respect to national banks and FSAs.

[169] The Board's regulations relating to formations, acquisitions, and nonbanking activities of holding companies are set forth at 12 CFR part 225 (Regulation Y), subparts A, B, C, D, I, and appendix C; 12 CFR 262.3; 12 CFR part 238 (Regulation LL)

Continued

Comments regarding Call Reports are separately addressed in section I.D. of this report. The comments discussed the Board's regulations and procedures for Bank Holding Company Act (BHC Act) filings, SLHC filings under the Home Owners Loan Act (HOLA), as well as Bank Merger Act filings.

BHC and SLHC reporting requirements comments

One commenter recommended that the Board streamline its FR Y-9 report form for shell holding companies of community banks. The commenter noted that the current form requires more information than is necessary in cases where the holding company has no assets except for the bank's stock. A commenter from a public meeting suggested that the agencies re-evaluate their reporting requirements in regulations and manuals in light of the banks' increasing and evolving use of technology. The commenter identified the check processing section of the operations handbook as an example where the manual should be updated in light of banks' reliance on technology. In addition, the commenter suggested that the Board consider whether all of the information required in its FR 2900 report, regarding transaction accounts, other deposits and vault cash, could be entirely automated and eliminate the need for banks to provide further explanation about those particular balances. The commenter also suggested that the inspection and annual site visit requirements in the retail payment systems handbook for banks to inspect businesses with which they pair to provide remote deposit capture be considered for elimination because of industry experience in establishing those business relationships.

A different commenter suggested reviewing the Board's FR Y-11 (Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies), FR Y-6 (Annual Report of Holding Companies), and FR Y-8 (The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transaction with Affiliates) and adjusting the reporting requirements of some of those reports from quarterly to annually if there are no actions in the interim that would merit quarterly reporting. The commenter specifically noted that the FR Y-8 could be changed to an annual reporting requirement if there were no transactions between the holding company and bank. A commenter recommended that the Board allow institutions to file electronically the Board's report FR 2052(b), the Liquidity Monitoring Report, so as to be able to attach spreadsheets and reduce the potential for human error involved in manually creating the report. The commenter also suggested that it would help institutions to be relieved from having to file by 7:00 a.m. daily Parts A, AA, and B of the Board's FR 2420 report (Selected Money Market Rates) and allowing them to provide those portions at a later time.

BHC Act, HOLA, and Bank Merger Act applications requirements comments

Commenters presented a variety of suggestions regarding the Board's application and filing requirements for banks, bank holding companies, and savings and loan holding companies. One commenter suggested eliminating the H(e) application forms used by savings and loan holding companies to engage in formations and acquisitions and replace it with the Board's FR Y-3 forms used by bank holding companies for similar activities. The commenter noted that the H(e) forms were developed decades ago, before the Board became the primary regulator of SLHCs and does not seem to have been revised to eliminate unnecessary burden. The commenter also noted that any missing information that a savings and loan holding company would be required to provide under a FR Y-3 form could be supplemented with a short form to the extent necessary for a filing. The same commenter also recommended that the Board's Regulation Y and LL provisions regarding waivers of application filing requirements be amended to permit acquisitions of both banks and savings associations where a Bank Merger Act is necessary and other conditions are met. The commenter also suggested expanding the waiver provision in Regulations Y and LL to except from an application requirement direct mergers by savings associations with other savings associations or banks, and mergers by banks with savings associations in situations where a Bank Merger Act application is filed and the acquiring holding company does not merge or acquire the shares of the target institution at any time. The same commenter also urged the Board to carefully consider incorporating features of the former OTS control analysis, such as passivity agreements and rebuttal commitments, into the Board's current regulations applicable to both bank and savings and loan holding companies. The commenter asserted that the OTS's regulation provided the benefit of more certainty and efficiency in certain cases, given the detailed control factors and explicit regulatory procedures for rebutting control, than the Board's current, less formal regulatory determinations. The commenter also suggested that the Board incorporate in Regulation LL the former OTS's exception to the filing of a change in bank control notice for a tax-qualified employee stock ownership plans (ESOP) and also provide an exception in Regulation Y for ESOPs of bank holding companies.

A commenter suggested that providing notice to the Board for a dividend waiver by an SLHC should be informational only and the Board should not be able to deny the notice as the primary regulator of the depository institution already has oversight of capital distributions.

With respect to BHC Act and Bank Merger Act applications, a commenter suggested that the Board not allow the pre-filing review process to be used to negotiate or otherwise discuss details of a proposed transaction and to automatically and promptly provide the public with detailed documentation of pre-filing communications. In addition, the commenter recommended that the agencies establish clear guidelines and expectations about what constitutes a public benefit arising from an acquisition or merger. Another commenter stated that a single comment letter regarding an application should not require the Board to act on the proposal instead of a Reserve Bank, particularly when the acquirer is financially sound and has a solid record under the CRA. One commenter recommended that the effectiveness of an institution's AML efforts should be included as a factor for applications under section 3 of the BHC Act.

OCC Regulations

Rules, policies, and procedures for corporate activities

Six EGRPRA commenters addressed 12 CFR part 5, the OCC licensing rules, and various other OCC licensing-related rules for FSAs. As indicated above, some of these commenters also addressed the OCC's proposal to amend part 5,[170] which the OCC issued during the start of the EGRPRA process and finalized in May 2015.[171] When the OCC published this proposed rule, the OCC noted that it also would consider any EGRPRA comments received on part 5 when finalizing the proposal, and most of these comments are discussed in the preamble to the OCC licensing final rule. This rulemaking is discussed

subparts A, B, C, E, F; 12 CFR part 239 (Regulation MM); 12 CFR 262.3.

[170] 79 FR 33260 (June 10, 2014).

[171] 80 FR 28346 (May 18, 2015).

in more detail in section E. 3. of this report.

Directors

Two trade associations recommended that 12 U.S.C. 72 be amended to update the ''representative'' requirement for directors of national banks given the evolution of the market and the need for qualified directors. These commenters stated that it would be appropriate to eliminate this requirement. These trade associations also recommended that the OCC eliminate the requirement under 12 CFR 143.3(d) that the majority of a *de novo* savings association's board of directors be representative of the state in which the association is located, given the ease of communication facilitated by technology and an increasingly interdependent finance market.[172]

Public benefit corporations

A nonprofit organization raised the possibility of banks becoming public benefit corporations. This commenter stressed that public benefit corporations do not pose safety-and-soundness concerns.

Approval process: fiduciary activities

Two trade associations recommended that the OCC revise 12 CFR 150.70(b) so that once the OCC has granted an institution permission to exercise some fiduciary powers, the institution may exercise all fiduciary powers without further approval. The commenter noted that this change would streamline the process.

Misleading titles

A trade association supported the provision in the OCC licensing proposed rule that would prohibit national banks from adopting a misleading title.[173]

Expiration of preliminary charter application approval

A trade association supported the provision in the OCC licensing proposed rule that would provide FSAs with a lengthier expiration of preliminary approval for charter applications.[174]

Expedited review—definition of eligible bank

A trade association stated that the OCC should not require national banks and FSAs to have an OCC compliance rating of 1 or 2 to qualify for expedited review, as in 12 CFR 5.3(g) of the OCC licensing proposed rule, noting that because the compliance rating is already included in the CAMELS composite rating the new requirement would be redundant. Furthermore, the commenter stated that there would be no greater certainty for national banks regarding eligibility for expedited review because the OCC still has the discretion to remove filings from expedited review.

Acquisitions

A trade association stated that the proposed amendment to 12 CFR 5.33 in the OCC licensing proposed rule to require an application for acquisitions conducted by national banks or thrifts that engage in a purchase and assumption transaction resulting in an increase in the asset size of the institution by 25 percent or more is a new substantive requirement for both banks and thrifts that is not connected to the task of integration.[175]

Branches

One banker suggested that if a national bank has a satisfactory rating and CRA compliance, it should not need prior approval from the OCC to open each branch.[176] This same banker noted that the OCC should revisit the 1000 foot rule for branch relocations. Two trade associations suggested that the OCC clarify that mobile phones and similar devices are not branches.[177] One trade association opined that the OCC should retain the different branching regimes for national banks and FSAs, as proposed in the OCC licensing proposed rule. The commenter strongly supported this approach over the first alternative described in the preamble to the licensing proposed rule, which would require both national banks and FSAs to file an application to branch.[178]

Necessity for new association

Two trade associations stated that the OCC should no longer consider whether a ''necessity exists'' for a federal stock association in the community to be served when deciding whether to approve an application under 12 CFR 152.1, now included in 12 CFR 5.20. They stated that necessity is duplicative of other factors the OCC considers, such as probability of usefulness and success under 12 CFR 152.1(b)(ii).[179]

Operating subsidiaries

A trade association stated that the proposed amendment to 12 CFR 5.34(e) in the OCC licensing proposed rule, which stated that ''no other person or entity has the ability to control the management or operations of the subsidiary'' for a national bank to invest in an operating subsidiary, will create uncertainty for joint venture arrangements organized as national bank operating subsidiaries. Without a definition of ''control,'' the commenter stated that it will be unclear whether the influence of a stakeholder with special expertise would prevent national banks from entering into joint ventures organized as operating subsidiaries, and that the current requirements already ensure that banks have sufficient control. This same commenter also stated that the OCC should change 12 CFR 5.34(e)(5)(ii) to ensure that joint ventures organized as operating subsidiaries are eligible for expedited notice treatment.[180]

Furthermore, this trade association stated that the proposed 12-month expiration for OCC approvals of operating subsidiaries for national banks in 12 CFR 5.34(e)(5)(viii) of the licensing proposed rule is a new substantive requirement for both national banks and FSAs.

This commenter also opposed proposed 12 CFR 5.34(e)(2)(iii) in the OCC licensing proposed rule, which requires that national banks have policies and procedures to preserve the limited liability of the bank and its subsidiaries, a requirement currently applied to FSAs. The commenter stated that the proposal did not provide sufficient analysis to explain why national banks should be subject to this requirement and that the change is not a clarifying change.

Two trade associations requested that the OCC clarify that a national bank may continue to invest in a joint venture or partnership that qualifies as an operating subsidiary under 12 CFR 5.34(e)(2) if the bank has the ability to control the management and operations of the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest in the subsidiary. These commenters requested that the OCC make a corresponding change to the

[172] The OCC has eliminated this requirement. It is not included in revised 12 CFR 5.20, which now applies to FSAs in place of part 143.

[173] The OCC adopted this provision in the OCC licensing final rule.

[174] The OCC adopted this provision in the OCC licensing final rule.

[175] The OCC licensing final rule did not include this proposed application requirement. Instead, the application provision of 12 CFR 5.53 now applies.

[176] This change would require a legislative change to 12 U.S.C. 36(i).

[177] The preamble to the OCC licensing final rule clarifies the application of the branching rules to mobile phones and similar devices.

[178] The OCC licensing final rule did not require FSAs to file an application to establish a branch.

[179] Section 5(e) of HOLA, 12 U.S.C. 1464(e), requires the OCC to consider whether a ''necessity exists.''

[180] The OCC licensing final rule includes clarifying amendments that address these comments.

proposed expedited notice procedures, 12 CFR 5.34(e)(5)(ii), to allow an investment in an operating subsidiary that is a joint venture or partnership to continue to be eligible for expedited notice treatment. They argued that the language in the licensing proposed rule is a significant departure from OCC precedent.

Bank service companies

A trade association stated that proposed 12 CFR 5.35(f)(2) included in the OCC licensing proposed rule is more burdensome than an after-the-fact notice requirement. The proposed provision required a prior notice with expedited review with notice deemed approved within 30 days unless the OCC notifies the filer otherwise instead of the current after-the-fact notice for investments in bank service companies.

Reporting

A trade association stated that the proposed requirement that FSAs submit annual reports to the OCC for certain operating subsidiaries and bank service corporations adds a new compliance burden without sufficient analysis or justification.[181]

Control of FSA operating subsidiary

Proposed 12 CFR 5.38(e)(2)(B) provides that an FSA can only invest in an operating subsidiary if it ''controls more than 50 percent of the voting interest of the operating subsidiary'' or ''otherwise controls the operating subsidiary.'' A trade association stated that, while a comparable standard has been in place for national banks under 12 CFR 5.34, this provision would be a new standard for FSAs and it would be helpful for the OCC to provide clarity on how an FSA would be deemed to ''otherwise control the operating subsidiary.''

Conversion

A trade association stated that the OCC should provide greater clarity on how to convert a financial subsidiary back to an operating subsidiary under 12 CFR 5.39.

Calculation of time

A trade association supported the proposed provision in the OCC licensing proposed rule that would calculate time for national bank filings by no longer allowing weekends or federal holidays to be filing due dates.[182]

[181] The OCC licensing final rule did not include this reporting requirement.

[182] The OCC licensing final rule includes this change.

OCC licensing proposed rule, in general

One commenter, a trade association, provided general comments on the OCC licensing proposed rule.

FDIC Regulations

Deposit insurance filing procedures

The agencies received two written comments and one oral comment on the FDIC's deposit insurance filing procedures, but no comments were received concerning FDIC or other agency regulations pertaining to *de novo* applications. The commenters' concerns centered on the view that the FDIC's policies and practices, principally, the Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions (Financial Institution Letter (FIL) 50-2009), discourage the formation of new depository institutions. Other comments focused on the duration of the review process with respect to applications for deposit insurance. The most frequent suggestions involved removing (1) the requirements for prior approval of a material change in business plan for a *de novo* institution's fourth through seventh years of operation, and (2) the perceived requirement to fund the bank's capital accounts at organization sufficiently to maintain capital at the level of 8 percent through the initial seven-year period. Other suggestions included issuing a new FIL to help dispel misconceptions and affirm FDIC's support for the formation of *de novo* institutions. The FDIC considered these comments in revising processes related to deposit insurance filing procedures, which are described on pages 129–31 of this report.

2. Powers and Activities

Interagency Regulations or Regulations Implementing the Same Statute

A. Proprietary Trading and Relationships with Covered Funds (the Volcker rule)

Section 619 of the Dodd-Frank Act, known as the Volcker rule, prohibits banking entities from engaging in proprietary trading and from investing in, sponsoring, or having certain relationships with ''covered funds.''[183]

Two commenters, both industry trade associations, addressed this rule. One commenter suggested that because banks may be subject to one or more regulators who have separate rule-writing authority, supervision and enforcement authority for the rule, banks need to receive examination guidance on how to comply with the rule. This commenter also stated that the definition of a ''covered fund'' under the rule is too broad and that the agencies should clarify the definition to be either a ''hedge fund'' or a ''private equity fund'' and provide clear definitions of both terms. By changing the definition, the commenter asserted that banks would be able to have or continue relationships with ordinary corporate vehicles and other entities that the commenter stated are not ''covered funds'' that were intended to be subject to the rule. The commenter also stated that the Volcker rule should not be applied where systemic risk is absent. Another commenter suggested that the agencies should expand and clarify the scope of activities that qualify under the exclusion for liquidity management and clarify the requirements for documenting reliance on the exclusion. The commenter also stated that the Volcker rule should be amended to make clear that a violation of the proprietary trading prohibition does not arise when a covered entity acts to correct trading errors. The commenter also suggested that the agencies raise the threshold for the requirement that covered entities adopt a compliance program, reduce certain provisions of the compliance program, and create a ''safe harbor'' from imposition of compliance program requirements that takes into account the business model of a covered institution.

[183] 12 U.S.C. 1851. Implementing agency regulations are set forth at 12 CFR part 44; 12 CFR part 211, subpart D; 12 CFR part 248; and 12 CFR part 347.

B. Community and Economic Development Entities, Community Development Projects, and Public Welfare Investments

12 CFR part 24 sets forth the standards and procedures that apply to national bank public welfare investments,[184] as provided by 12 U.S.C. 24 (Eleventh). Three EGRPRA commenters specifically addressed this rule.

In general

Two commenters, a law firm and a nonprofit lender, recommended that the OCC consider ways to increase the opportunity for banks to make public welfare investments, which would help CDFIs grow and would in turn help low-income communities. One of the commenters, the law firm, further noted the need for clarification of what constitutes the investment amount for the public welfare investment limit. Additionally, the commenter recommended that in addition to the

[184] 12 CFR part 24.

general investment limit, certain investments, including small business investment corporations, CDFIs, and community development corporations, should have separate limits. Further, the commenter suggested that the OCC should change the current investment authority containing a non-exclusive list of public welfare investment vehicles to a separate investment authority for individual public welfare investment vehicles. The commenter also noted inconsistencies among the agencies about public welfare investments, such as whether an investment includes a loan, and differing capital and surplus investment percentages for public welfare investments. Lastly, the commenter recommended that the OCC clarify the difference between an equity investment and a loan, and that the OCC should incorporate OCC Interpretive Letter #1076 (December 2006) into its regulations.

Capital charge for community development and public welfare investments

One commenter, a CDFI, suggested lowering the amount of capital stock and surplus charged when banks make community development and public welfare investments. The commenter suggested that regulators become more familiar with business models of the community economic development entities that are insuring depositories making community development and public welfare investments. The commenter noted that AERIS, S&P, or other organizations rate CDFIs and therefore, the level of capital charged should not be dollar-for-dollar, but 50 or 75 percent.

OCC Regulations

A. Activities and Operations

Subpart A of 12 CFR part 7 contains a nonexclusive list of national bank and FSA powers. Subpart E of 12 CFR part 7 contains the OCC's rules related to a national bank's use of technology to deliver services and products consistent with safety and soundness. One commenter, a banker, noted that when a customer elects to receive statements and notices electronically, banks are required to confirm the customer's consent electronically in a manner that reasonably demonstrates the customer can access the information in the electronic format that it is sent. This commenter requested that the term ''reasonably'' be further defined.[185]

B. Debt Cancellation Contracts and Debt Suspension Agreements

12 CFR part 37 governs the issuance of debt cancellation contracts and debt suspension agreements (DCCs) by national banks. Nine EGRPRA commenters addressed this rule.

Preemption

One commenter, representing consumer groups, suggested that the OCC revise part 37 to roll back preemption of state insurance laws and further strengthen part 37. The commenter noted that the CFPB's first enforcement actions were against credit card issuing national banks for abuses in the sale of debt suspension products and that the CFPB actions indicate a need to bolster the protections for consumers with respect to DCCs.

Enforcement actions

A trade association stated that consent orders have effectively created regulations without the due process required by the Administrative Procedures Act because they expand or conflict with OCC regulations.

Prohibited practices

One commenter, a trade association, suggested that the OCC amend 12 CFR 37.3 to add a general statement that any description of the product must be accurate and not deceptive or misleading. Another trade association suggested that the OCC expand 12 CFR 37.3(b) to apply to any description of the product, not just the required disclosure.

Refund of fees

One commenter, a trade association, suggested that the OCC delete the sentence in 12 CFR 37.4 that reads, ''A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.'' The commenter stated that this sentence is unnecessary and burdensome because it prevents banks from offering less expensive debt protection products to customers who cannot afford more expensive contracts.

Payment of fees

One commenter, a trade association, suggested that the OCC delete the language in 12 CFR 37.5 that states a ''bank may offer a customer the option of paying the fee for a contract in a single payment, provided the bank also offers the customer a bona fide option of paying the fee for that contract in monthly or other periodic payments.'' The commenter asserted that this language is unnecessary because the purchase of debt protection products almost exclusively is financed.

Incentive compensation

Two trade associations addressed the issue of incentive compensation and DCCs. One commenter said the OCC should prohibit incentive compensation and the other said banks should be encouraged to establish and adhere to internal guidelines and metrics on incentive compensation.

Disclosure

Two trade associations addressed disclosure in debt cancellation contracts. Both commenters recommended that the disclosure rules should cross-reference Federal Trade Commission guidelines on clear and conspicuous digital disclosures and other existing standards. The commenters also suggested that the disclosure provisions should require that the following key disclosures be made before enrollment: (a) optional nature of product; (b) all fees relating to product; (c) eligibility requirements; (d) material limitations and exclusions; and (e) when cancellation or termination is permitted. One commenter recommended that the required disclosures also include contact information for the bank. Finally, both commenters recommended that the short-form disclosure should not be required for in-person transactions.

CFPB Bulletin

Three trade associations asked the OCC to amend its rules to provide clear guidance in light of CFPB Bulletin 2012–06 and enforcement orders by the CFPB, FDIC, and OCC.[186] Two trade associations recommended that the rules incorporate language on rebuttals from the CFPB Bulletin and specify that customer service manuals must provide clear guidance and language for rebuttals.

Telemarketing

Two trade associations offered recommendations on the rules governing telemarketing. Both recommended that the rules should clarify that deviations from the script

[185] This consumer consent requirement is not required by OCC regulations, but by the Electronic Signatures in Global and National Commerce Act (E-Sign Act). See 15 U.S.C. 7001(c)(1)(C)(ii). The E-Sign Act does not define ''reasonably'' but required the Department of Commerce and the Federal Trade Commission to provide a report on this consumer consent provision. See ibid. section 7005(b). This report was published in 2001. See *https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-esign/esign7.pdf.*

[186] See, *http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf.*

are permitted for the assistance of customers, for natural transitions, to enhance consumer understanding, or to avoid misrepresentation. Both commenters also recommended that telemarketers make the purpose of a sales call clear before engaging in a solicitation. One commenter also recommended that telemarketing should be subjected to quality assurance reviews and that the format of telemarketing call information should be complete and clear enough to avoid deception or being misleading.

Oversight

Two trade associations said the rule should require providers to have strong management oversight, with cross-references to the OCC vendor management guidance, OCC Bulletin 2013–29.[187]

Cancellation

One trade association recommended that when a customer calls to cancel, the rules should allow the provider to provide a full explanation of the product and make inquiries about eligibility for benefits.

Claims processing

One trade association stated that the rules should require that claims be processed in a timely manner.

Complaints

One trade association noted that the rules should require a system for receiving, investigating, and resolving customer complaints, including management review.

C. National Bank Fiduciary Activities

12 CFR part 9 sets forth the standards that apply to the fiduciary activities of national banks. The OCC received EGRPRA comments on these rules from two trade associations.[188]

Retention of documents

One commenter, a trade association, requested that the OCC amend 12 CFR 9.8 to expressly permit the electronic retention of documents to satisfy regulatory requirements. The commenter stated that electronic retention would modernize the fiduciary rules and provide some burden relief while supporting the fiduciary duty to keep adequate records and render accounts. The commenter suggested specific regulatory language.

This same commenter requested that the OCC amend 12 CFR 9.8(b) to require that documents be retained for a ''necessary period'' or to refer to applicable law on the retention of documents, instead of the current three-year requirement. The commenter explained that three years may be inadequate in some situations, such as when a suit by a beneficiary against a predecessor trustee filed more than three years after the account is closed but before the state statute of limitations has run.

Collateralized deposits

A trade association commenter recommended that the OCC amend 12 CFR 9.10 to state that a bank ''may'' collateralize deposits if the deposits are directed by a third party or in the governing instrument. This same commenter also recommended expanding the acceptable collateral allowed in 12 CFR 9.10(b)(2)(iv) to include not just surety bonds but other instruments that provide similar protection from loss.

Custody of fiduciary assets

Section 9.13(a) requires a national bank to place assets of fiduciary accounts in joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. Further, 12 CFR 9.13(a) states that a national bank may maintain the investments of a fiduciary account off premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls. One commenter, a trade association, explained that the requirements in 12 CFR 9.13(a) are inconsistent, and in order to reconcile the first and second sentences of the current 12 CFR 9.13(a) the OCC should amend the rule to accommodate a situation in which a separate custodian is selected before an account is established with a fiduciary. The commenter suggested specific regulatory language to replace paragraph (a).

Deposits of securities with state authorities

One commenter, a trade association, recommended that the OCC amend 12 CFR 9.14 to provide that if a bank makes a best effort to comply with this provision's requirement to deposit securities with state authorities or the appropriate Federal Reserve Bank, yet is unable to meet the deposit requirement because of a state's refusal or inaction, the bank will be deemed to have complied. The commenter noted that banks have been unable to comply because of states refusing deposits or failing to file necessary paperwork.[189]

Collective investment funds

12 CFR 9.18(b)(5)(iii) provides that a bank administering a collective investment fund that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period for withdrawals from the fund, not to exceed one year. One commenter, a trade association, recommended amending 12 CFR 9.18(b)(5)(iii), to replace references to ''real estate'' with references to ''assets that are illiquid or otherwise not readily marketable.'' The commenter suggested that the rule should recognize other types of illiquid assets, like guaranteed investment contracts, synthetic investment contracts, or separate account contracts with limits on transferability. The commenter noted that this change also would be consistent with OCC Interpretive Letter 1121 (June 18, 2009), which allows an individual bank to require a longer advance notice period when appropriate and disclosed to investors, and with the Collective Investment Funds Handbook. The commenter also stated that this amendment would allow banks not to have to apply to the OCC on a case-by-case basis for permission for advance notice requirements. The commenter suggested specific regulatory language to replace 12 CFR 9.18(b)(5)(iii).

This same commenter recommended amending 12 CFR 9.18(b)(6) to allow flexibility in the timing of a final audit when a collective investment fund is terminated shortly after the 12-month audit period ends because the cost of a stub-period audit can be substantial. Specifically, the commenter suggested allowing a bank terminating a fund within 15 months after the last audit to wait until the fund has terminated to complete the final audit.

This commenter also requested that the OCC periodically adjust the total asset limit in 12 CFR 9.18(c)(2) for mini-funds in light of inflation and economic growth. (A mini-fund is a fund that a bank maintains for the collective investment of cash balances received or held by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act that the bank considers too small to be invested

[187] *https://occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html.*

[188] As indicated in section E of this report, the OCC EGRPRA final rule made several amendments to part 9 to eliminate regulatory burden and remove outdated or obsolete provisions. Some of these amendments incorporate these EGRPRA comments on part 9 and are discussed in the preamble to this final rule. See 82 FR 8082 (January 23, 2017).

[189] The OCC EGRPRA final rule amends this provision to permit national banks to make these deposits with the appropriate Federal Home Loan Bank in addition to a Federal Reserve Bank.

separately in an economically efficient manner.) The commenter specifically stated that the OCC should raise the current threshold of $1 million to at least $1.5 million, which is the inflation-adjusted value of $1 million in 1996 dollars (the last time the threshold was revised).[190]

Furthermore, this commenter recommended that the OCC amend 12 CFR 9.18(b)(1), which requires the bank to make a copy of its written collective investment plan available for public inspection at its main office during all banking hours and to provide a copy of the plan to any person who requests it, to allow a bank to provide an electronic copy of the plan, as an alternative to mailing the plan, and to require that the bank provide a paper copy upon request. This commenter also requested that the OCC remove the requirement that a copy of the plan be available for public inspection at the bank's main office.[191]

Edge Act corporations

One commenter, a trade association, stated that part 9 should not be applied to Edge Act corporations because they are covered by Regulation K, which is inconsistent with part 9. The commenter stated that there should be a clear statement that the fiduciary and investment advisory services offered by Edge Act corporations are exclusively subject to Regulation K and other Board guidance.

D. National Bank Real Estate Lending

12 CFR part 34 sets forth standards for real estate-related lending and associated activities by national banks. The OCC received two EGRPRA comment letters representing a number of nonprofit organizations discussing the applicability of state law as set forth in 12 CFR 34.4. The commenters raised the same issues with 12 CFR 34.4 (applicability of state law) as they raised with 12 CFR part 7, subpart D. (See below.) In particular, they stated that the OCC's preemption rule in 12 CFR 34.4 ignores the intent of Congress with respect to the ''prevents or significantly interferes with'' standard articulated in the Dodd-Frank Act and the Act's ''case-by-case'' determination and CFPB consultation requirements. One commenter provided specific amendatory text. It noted that this amendatory text would restore the states' ability to protect consumers from some of the abusive practices that led to the 2008 financial crisis.

E. National Bank Sales of Credit Life Insurance

12 CFR part 2 sets forth the principles and standards that apply to a national bank's provision of credit life insurance and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank. A trade association stated that it supports 12 CFR part 2 in its current form, without change or amendment.

F. Electronic Operations of Savings Associations

12 CFR part 155 sets forth how an FSA may provide products and services through electronic means and facilities. Three EGRPRA commenters addressed this rule. One bank requested that the OCC eliminate the requirement that an FSA file a written notice with the OCC prior to establishing a transactional website. Two trade associations suggested that the OCC allow FSAs to notify the OCC after they establish a transactional website in order to reduce delays with launching the website.[192]

G. Fiduciary Powers of FSAs

12 CFR part 150 sets forth the standards that apply to the fiduciary activities of FSAs.[193] Two trade associations and one nonprofit organization commented on this rule.

Ancillary activities

12 CFR 150.60 provides an illustrative list of activities that are ancillary to the fiduciary activities of an FSA. Two trade associations requested that the OCC amend this section to make clear that ancillary activities are not in and of themselves ''fiduciary activities.'' For example, some trust departments serve exclusively as directed trustee or custodian of a pension plan. They argued that if a trust department is not engaged in fiduciary activities, OCC examiners should not document that an institution is performing fiduciary activities, since that documentation can create fiduciary liability exposure (*e.g.*, under the Employee Retirement Income Security Act of 1974).

Scope/Authority

A commenter representing consumer groups argued that 12 CFR 150.136, which describes how an FSA may conduct fiduciary activities in multiple states and the extent to which state laws apply to these fiduciary activities, is outside the OCC's authority and not justified by HOLA or the Dodd-Frank Act.

H. FSA Lending and Investment

In general, 12 CFR part 160 sets forth the lending and investment authority of FSAs and establishes specific standards and requirements for this activity. One commenter, a law firm, suggested that the OCC support the repeal of the statutory limits on consumer lending for FSAs, currently required in 12 U.S.C. 1461(c)(2)(D) and 12 CFR 160.30. The commenter stated that in recent years, because congressional action has tended toward consistency and uniformity in the powers and authorities granted to banking organizations regardless of charter type, the consumer lending authority of federal savings banks should be equal to that of commercial banks with which they compete. The commenter further explained that because credit card accounts (which are not secured) are not included in the consumer loan limit, the OCC should remove the consumer loan limit to promote safety and soundness by encouraging investment in secured consumer loans.[194]

I. Preemption of State Due-On-Sale Laws (implementation of Garn-St. Germain Act)

12 CFR part 191, which implements section 341 of the Garn-St. Germain Depository Institutions Act of 1982 (Garn-St. Germain),[195] preempts state laws prohibiting due-on-sale clauses or the enforcement of such clauses, prohibits lenders from exercising due-on-sale clauses in certain transactions, and prohibits prepayment penalties in certain transactions. One commenter, a consumer group, stated that the OCC should maintain the protections against lenders exercising due-on-sale clauses for the kinds of transfers listed in 12 CFR 191.5(b)(iii), (v), and (vi) and provide additional protections to ensure

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[190] As indicated in section E of this report, the OCC EGRPRA final rule amends 12 CFR 9.18(c)(2) to increase the threshold to $1.5 million with an annual adjustment for inflation, in response to this comment.

[191] As indicated in section E of this report, the OCC EGRPRA final rule amends 12 CFR 9.18 to require that the national bank make a copy of the plan available to the public either at its main office or on its website. The final rule also clarifies that a bank may satisfy the requirement to provide a copy of the plan to any person who requests it by providing it in either written or electronic form.

[192] As indicated in section E of this report, the OCC EGRPRA final rule removes this transactional website notice requirement. See 82 FR 8082 (January 23, 2017).

[193] As indicated in section E of this report, the OCC EGRPRA final rule amended this rule.

[194] As indicated in section E of this report, the OCC has developed a proposal to provide FSAs with greater flexibility to adapt to changing economic and business environments and to meet the needs of their communities without having to change their governance structure by converting to a bank.

[195] Public Law 97–320, 96 Stat. 1469, 1505–1507.

post-transfer continuity of homeownership. This commenter also stated that OCC regulations should specify that servicers must recognize the assumption of a mortgage by a successor in interest pursuant to an exempt transfer under 12 CFR 191.5(b) regardless of the default status of the loan and without additional credit screening. Finally, this commenter stated that OCC regulations should require servicers to provide information to successors and evaluate them for loan modifications before assuming the loan.

J. Preemption

12 CFR part 7, subpart D; 12 CFR 7.5002; and 12 CFR 160.110 address the applicability of state law to national banks and FSAs and set out the scope of the OCC's visitorial powers. Fifteen commenters addressed this rule.

A number of nonprofit organizations disagreed with the OCC's interpretation or implementation of the preemption provisions and visitorial powers provisions in the National Bank Act, the Dodd-Frank Act, and the Supreme Court's interpretation of visitorial powers and the standard for federal preemption. A nonprofit organization commenter noted that preemption of state laws such as the California Homeowners Bill of Rights is harmful to communities and wrong on the merits and that the OCC should consider and issue guidance on whether national banks are subject to state laws when they service loans originated by federally chartered thrifts. Commenters stated that the OCC should revise § 7.4002, regarding non-interest fees, and § 7.5002(c), regarding electronic services, to ensure that these provisions are not read to preempt state laws in a manner inconsistent with the Dodd-Frank Act or are not outdated. A commenter argued that the OCC should revisit its definition of ''interest'' in § 160.110 because it unnecessarily preempts state laws governing fees that are not ''interest'' in any real sense. Finally, a non-profit organization suggested that (i) the concept of the exclusive visitorial authority with respect to national banks is outdated in some aspects, particularly as it relates to the CRA, and (ii) states, cities, and municipalities should have the power to examine banks and bank practices as they relate to their local communities.

Two trade associations stated that the OCC's preemption regulations are an accurate interpretation of the Dodd-Frank Act and there is no need for any review or changes at this time.

FDIC Regulations

Activities of insured state banks and insured savings associations

Section 24 of the FDI Act and its implementing regulation, 12 CFR part 362, generally limit the activities and investments of state banks (and their subsidiaries) to those permitted for national banks (and their subsidiaries), absent application to and the approval of the FDIC. The FDIC may approve such applications only if the FDIC determines that the activity would pose no risk to the Deposit Insurance Fund and if the state bank meets applicable capital standards.

One comment was received regarding the activities of insured state banks and insured savings associations. The commenter objected to the FDIC's requirement of an application before a state bank may enter into a lease of mineral interests originally acquired in connection with debts previously contracted (DPC).

3. International Operations

Interagency Regulations or Regulations Implementing the Same Statute

A. International Lending Supervision

12 CFR part 28, subpart C; 12 CFR part 211, subpart D (Regulation K); and 12 CFR part 347, subpart C set forth the OCC's, Board's, and FDIC's rules, respectively, implementing the International Lending Supervision Act of 1983. Specifically, these rules require entities regulated by the agencies to establish reserves against the risks presented in certain international assets and set forth the accounting for various fees received by these entities when making international loans. These rules also provide for the reporting and disclosure of international assets. Although implementing the same statute, the agencies did not issue these rules jointly.

The agencies received one comment, from a banking trade association, with respect to this category of rules. This commenter stated that the Board's Regulation K should be the subject of a comprehensive review because of developments in international and domestic banking since 2001. In such a review, the commenter requests the following changes:

International Investment Thresholds

U.S. banking organizations are able to make investments abroad, subject to certain conditions. As required by 12 CFR 211.9(a), direct and indirect investments can be made without submitting prior notice if they are made in accordance with the general consent and limited general consent (both defined in statute) of the Board. Currently, the definition of ''general consent'' in 12 CFR 211.9(b)(4) does not allow a portfolio investment to exceed $25 million. Under 12 CFR 211.9(c)(1), the Board also grants ''limited general consent'' to investors that are not well capitalized and well managed, so long as it is the lesser of $25 million or certain thresholds tied to the investor's tier 1 capital. The commenter requested that the Board update the ''general consent'' and ''limited general consent'' thresholds from $25 to $50 million to make these fixed thresholds more consistent with current market values.

Dissolution under the Edge Act

The commenter stated that the Board should expressly permit banks to use other corporate transactions that effectively result in the dissolution of Edge Act corporations, such as the merger of Edge and agreement corporations, in addition to voluntary liquidations. Currently, banks that wish to wind down Edge Act corporations may do so under 12 CFR 211.7 only through voluntary liquidation, which involves, according to this commenter, a ''long and costly process.'' This commenter further stated that in practice, this means that banks slowly unravel these corporations by phasing out creditors and shifting liabilities away from the corporation until it can be legally dissolved.

Investments and activities abroad

Currently, under 12 CFR 211.8(b), member banks can make direct investments in certain entities, including foreign banks, domestic or foreign organizations formed to hold shares of a foreign bank, and subsidiaries established under 12 CFR 211.4(a)(8). The commenter noted that this regulation does not expressly address whether it is permissible to hold stock of an Edge Act or agreement corporation, and requested that the Board amend its regulation to reflect the established Board practice that permits a member bank to hold the stock of an Edge Act or agreement corporation.

Consistency of standards

Several commenters argued that the Board should enhance regulatory consistency with foreign regulators. Commenters specifically pointed to capital and liquidity requirements as regulatory standards that should be consistent across jurisdictions. A commenter stated that the Board should employ in its resolution planning efforts to the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions. Another commenter stated that disclosure requirements should be as consistent as possible across jurisdictions and sufficiently detailed to allow users to perform meaningful comparisons across national regimes. A commenter suggested that the Board should release better and simpler guidance regarding who is a foreign correspondent, and regarding filing expectations for and exemptions from the Report of Foreign Bank and Financial Accounts.

Deposit and credit products

Commenters suggested that the Board clearly affirm in Regulation K the ability of Edge Act corporations to offer deposit and credit products to foreign persons who choose to hold business or personal assets in entities that are disregarded for federal income tax purposes under Regulation K.

Safe Act

A commenter argued that Regulation K or the CFPB's Regulation G should clearly indicate that Edge Act corporations are not subject to the SAFE Act and Regulation G.

FDIC Regulations

Foreign banking and investment by insured state nonmember banks

Section 109 to subpart A of part 347 authorizes state nonmember banks to make indirect investments in nonfinancial foreign organizations, but this authorization is subject to limitations. The rule states that a bank, through an authorized subsidiary or an authorized Edge Act corporation, may acquire and hold equity interests in foreign organizations that are not foreign banks or foreign banking organizations and that engage generally in activities beyond those listed in section 105(b) of the rule. Additionally, the investment in the foreign organization through the subsidiary or Edge Act Corporation cannot exceed 15 percent of the bank's tier 1 capital.

The objective of the limitations in § 347.109 is to protect insured banks from risks arising from the activities or investments of an affiliate. A primary risk that arises from the activities of a foreign organization, and that can cause losses to the bank, is country risk, *i.e.*, the risk that economic, social, and political conditions in a foreign country, including expropriation of assets, exchange controls, and currency devaluation, will adversely affect an institution's financial interests.

The agencies received one comment letter pertaining to 12 CFR part 347, subpart A, which, in part, addresses limitations on indirect investments in nonfinancial foreign organizations. The commenter recommended that the capital-based limits on investments in foreign organizations generally be raised. More specifically, the commenters argued that extensive capital requirements and calculations imposed on banks by the rules implemented under the Basel III Accord should allow for more lenient capital-based limits on investment in foreign organizations.

4. Banking Operations

Board Regulations

A. Collection of Checks and Other Items by Board and Funds Transfers Through Fedwire (Regulation J)

Regulation J provides the legal framework for IDIs to collect checks and other items and to settle balances through the Federal Reserve System.[196] The regulation specifies terms and conditions under which Federal Reserve Banks will receive items for collection from, and present items to, depository institutions. In conjunction with Regulation CC, Regulation J establishes rules under which depository institutions may return unpaid checks through Federal Reserve Banks. The regulation also specifies terms and conditions under which Federal Reserve Banks will receive and deliver transfers of funds over Fedwire, the Federal Reserve's wire transfer system, from and to depository institutions.

One commenter, a trade association that represents federal credit unions, expressed concerns with the Board's changes to Regulation J that were effective in July 2015, which changed the check settlement time for paying banks to as early as 8:30 a.m. eastern time. The commenter stated that the earlier time would lead to an increased number of daylight overdrafts for credit unions in their Federal Reserve accounts, thereby increasing fees to those credit unions, because they often do not have the same access to sources of early morning funding as other financial institutions. The commenter noted that holding higher balances or paying higher daylight overdraft fees would affect returns to credit union members.

[196] Regulation J, 12 CFR part 210.

B. Reimbursement for providing financial records (Regulation S)

Regulation S establishes rates and conditions for reimbursement to financial institutions for providing customer records to a government authority and prescribes recordkeeping and reporting requirements for IDIs making domestic wire transfers and for IDIs and nonbank financial institutions making international wire transfers.[197] Regulation S was revised shortly before 2010, and the revision became effective on January 1, 2010. The revisions to Regulation S changed the regulation in several ways. Most significantly, the personnel fees chargeable for searching and processing document requests are increased substantially. The amendments also encourage electronic document productions by not allowing a $0.25 per page fee to be charged by a financial institution for printing electronically stored information without the requesting agency's consent. The amended regulation also includes a mechanism for automatically updating the labor rates found in the regulation every three years, and makes other technical changes to the rule.

A few commenters recommended that the Board should increase the current reimbursement structure under Regulation S to account for the current costs of complying with the regulation. Specifically, commenters suggested that the Board should revise appendix A to § 219.3 to update and modernize the regulation to account for the changes in today's labor costs and to narrow the exceptions so that community banks can be reimbursed adequately for the burden of complying with government requests for documents. One commenter noted that the Board committed to update the reimbursement rate for personnel costs by relying on the Occupational Employment Statistics program maintained by the Bureau of Labor Statistics, which is updated every three years. However, the commenter indicated that the Board has not provided an update since 2009.

C. Reserve requirements of depository institutions (Regulation D)

The Board received many comments on reserve requirements for depository institutions. Regulation D imposes uniform reserve requirements on all depository institutions with transaction accounts or nonpersonal time deposits, defines such deposits, and requires reports to the Federal Reserve.[198]

[197] Regulation S, 12 CFR part 219.

[198] Regulation D, 12 CFR part 204.

Reserve Requirements

Numerous commenters suggested changes to Regulation D. Most commenters suggested eliminating or increasing the numeric limit on the number of convenient withdrawals and transfers per month that may be made from a savings deposit (six-transfer limit). Other comments included reducing the deposit reporting requirements and eliminating Regulation D altogether. Specifically, the majority of commenters suggested that the Board revise the six-transfer limit. Some commenters suggested that the Board eliminate all transfer limitations, while others suggested that the Board expand the category of unlimited transfers to include computer, online, and mobile platforms, as well as permit bank-initiated transfers to facilitate overnight sweeps. Some commenters suggested that, at a minimum, the Board increase the numeric limit on convenient transfers from six to a higher number, such as 10, 12, or 20.

Reduce deposit reporting requirements

One commenter suggested that the reserve requirement be based on ''actual dollar volume clearing'' and that the Board should require depository institutions to maintain a collateralized line of credit instead of reserve requirements.

Additional Regulation D Comments

A few commenters made additional suggestions for amendments to Regulation D. One commenter generally stated that the Board should clarify the definitions for the different types of accounts, particularly the term ''savings deposit'' and the rules for automatic transfers. Another commenter requested that the Board better define the term ''occasional basis'' as it relates to depositors who exceed the six-transfer limit. One commenter also suggested that Regulation D be eliminated altogether because reserves are no longer necessary.

OCC Regulations

Banking Operations

12 CFR 7.3000 provides the rules regarding the establishment of a national bank's hours of operation and ceremonial and emergency closings. 12 CFR 7.3001 provides the rules regarding the sharing of national bank and FSA space and employees. One commenter, a trade association, strongly urged the OCC to keep its rules relating to bank hours and shared space and employees simple and basic with additional criteria provided in guidance. It stated that these rules provide important flexibility to banks to set their hours and to innovate in the delivery of products and services to their customers.

FDIC Regulations

Assessments

Part 327 sets out the rules for determining deposit insurance assessments for certain insured institutions. The FDIC charges quarterly, risk-based assessments based on separate systems for large banks (generally, those with $10 billion or more in assets) and small banks. Assessments are calculated as an assessment rate multiplied by a bank's assessment base. A bank's assessment base generally is equal to its average consolidated total assets less its average tangible equity.

In May 2016 the FDIC adopted a final rule that revised the calculation of deposit insurance assessments for established small banks. The May 2016 rule bases assessments for these banks on an underlying model that estimates the probability of failure over three years, and eliminates risk categories for these banks.

The FDIC received two comments during the EGRPRA review on its assessments rule. Both comments pertained to a notice of proposed rulemaking that was published in the **Federal Register** in July 2015.[199] A second, revised notice of proposed rulemaking was published in the **Federal Register** in February 2016,[200] and a final rule was published in the **Federal Register** in May 2016.[201]

The first comment suggested that the definition of brokered deposits used in the proposed assessments rule was an inaccurate indicator of risk, and that banks should not be penalized (via a brokered deposits ratio in the proposed rule) for having brokered deposits. The second comment suggested that the proposed assessments rule could negatively affect community banks and commercial real estate lending by community banks. The substance of both comments was considered during the rulemaking process.

5. Capital

Interagency Regulations or Regulations Implementing the Same Statute

A. Annual Stress Tests

Section 165(i)(2) of the Dodd-Frank Act requires certain banks with total assets greater than $10 billion to conduct annual stress tests.[202] The agencies received seven comments from four banks, two trade organizations, and one individual related to their annual stress testing requirements. Some commenters requested that traditional banks (albeit with different definitions) should be excluded from the FDIC's rule on stress testing. Additionally, commenters said that the public disclosure requirement in the rule was not helpful for midsize institutions and could put unwarranted pressure on the banking system. Lastly, a commenter made various technical requests related to the CCAR program that is run by the Board.

Exempt traditional and smaller banks from stress testing

Two commenters suggested that the agencies not apply stress testing requirements to community banks. One commenter specifically suggested that the agencies not subject banks below $50 billion in assets to stress testing. These commenters argued that stress testing is not appropriate for institutions with simplistic balance sheets and that the costs outweigh the benefits. One commenter requested that the agencies provide more information on how community banks can conduct stress testing to show that they have an appropriate amount of capital for their risks.

Stress test disclosure requirements

One commenter suggested that the disclosure requirements related to stress testing are problematic and that the agencies should remove them to the extent possible. Additionally, the commenter stated that Congress should repeal the statutory basis for this requirement. The commenter was concerned that midsize bank disclosures could be misinterpreted, and in times of financial stress, could add unwarranted pressure on the banking system. The commenter asserted that the stress testing results are not directly comparable to those of CCAR institutions, are difficult to compare to other mid-size institutions, and are based on hypothetical scenarios that are not necessarily grounded in reality.

Stress testing scenarios/modifications to CCAR

One commenter suggested that the agencies should make various modifications to the CCAR process. First, the commenter suggests that certain parts of the CCAR regulations

[199] 80 FR 40838 (July 13, 2015).

[200] 81 FR 6108 (February 4, 2016).

[201] 81 FR 32180 (May 20, 2016).

[202] The agencies implementing regulations for stress tests are set forth at 12 CFR part 46; 12 CFR part 325, subpart C.

lack clarity and contain duplicative and redundant requirements that require an unnecessary expenditure of resources. In particular, duplication and redundancy in capital planning scenarios creates significant additional costs without corresponding supervisory benefits. The commenter was skeptical that the use of an ''adverse'' scenario in the CCAR process provides any material supervisory benefit beyond that already provided by the ''severely adverse'' scenario. Another commenter suggested that the agencies should have the ability not to require the ''adverse'' scenario. This commenter asserted that the adverse scenario does not provide much analytical and supervisory benefit.

FR Y–14 reports

One commenter suggested that the FR Y-14 reports contain duplicative or inconsistent requirements that result in significant duplication in the information submissions that are provided as part of the CCAR process. The commenter stated that these duplicative or unnecessary requirements increase the size of these submissions and increase the amount of time necessary to prepare and finalize them. The commenter suggested that the regulatory transitions template should not be required beginning in 2017.

Extension of time between release of scenarios and filing date

One commenter suggested that there should be more time between when the agencies release CCAR scenario information and require capital plan submissions. The commenter contended that the current timeframe unnecessarily limits the amount of thought and planning that can go into the submissions.

Mid-year cycle

One commenter suggested that CCAR should not require an additional idiosyncratic stress test during the mid-cycle timeline. The commenter argued that the Board should have discretion as to whether or not to require such test.

Agencies should disclose more

One commenter suggested that the Board should share the results of their DFAST scenarios prior to requiring banks to submit their annual capital plans. The commenter suggested that the current practice creates an element of uncertainty when banks develop their planned capital actions. Another commenter suggested that the agencies should provide more information about the models that they use for stress tests. One commenter, however, strongly supported the current CCAR process, and opposed the disclosure of agency models because disclosure would impact the efficacy of the tests and models by allowing banks to modify their processes in advance of the tests.

6. Community Reinvestment Act

Comments on CRA and CRA Sunshine are discussed in this report at sections I. D. and I.E., respectively.

7. Consumer Protection

Interagency Regulations or Regulations Implementing the Same Statute

A. Fair Housing

The OCC and FDIC have separate regulations relating to fair housing protections.[203] For the OCC, 12 CFR part 27 generally requires national banks to obtain certain information in their taking of applications for home loans. Part 27 was promulgated in 1979, before HMDA required collection of race and gender data on home mortgage loan borrowers. Even after HMDA required collection of information about home mortgage loan borrowers, part 27 has required banks to maintain in their files reasons for loan denials, while HMDA regulations have made this data element optional. The CFPB recently amended its HMDA rule, 12 CFR part 1003 (Regulation C),[204] to require all HMDA reporters to maintain denial reasons beginning on January 1, 2018. 12 CFR part 128 imposes nondiscrimination requirements for FSAs with respect to lending, applications, advertising, employment, appraisals, underwriting, and other services. 12 CFR 128.6 specifically requires savings association HMDA reporters to enter the reason for all home loan denials.

For the FDIC, 12 CFR part 338, subpart A, prohibits insured state nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions. 12 CFR part 338, subpart B, notifies all insured state nonmember banks of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B, 12 CFR part 1002, in order to monitor an institution's compliance with the ECOA. Subpart B also notifies certain insured state nonmember banks of their duty to maintain, update, and report a register of home loan applications in accordance with Regulation C. 12 CFR part 390, subpart G, is similar to 12 CFR part 128, described above, with respect to state savings associations.

Several commenters commented on fair housing requirements. One consumer group stated that, under the Fair Housing Home Loan Data System, banks may be required to keep a fair housing log if the data show a variation in the loans between people based on race or national origin. This commenter also noted that it is very difficult for the average citizen to make a complaint because there is no way for them to tell how their loan compares to the loan issued to another person in a similar economic circumstance but with a different race or national origin.

This same consumer group also stated that the regulations need to be stronger because it seems that the only repercussion for discriminatory practices is to keep the fair housing log. An individual or a fair housing organization can file a discrimination complaint under the fair housing laws, but this requires resources that are not always available.

One commenter, an attorney, suggested that the OCC can reduce burden by removing 12 CFR part 27, which the OCC has not updated since 1994. This commenter stated that part 27 is duplicative of the HMDA and Fair Housing Act. The commenter also stated that the rule is outdated because it refers to the Board's Regulation C and not to the new CFPB HMDA rule.

One financial institution suggested that the Fair Housing Act and ECOA regulations should be merged into a single regulation.

One consumer group stated that the most valuable tool in fighting redlining is data; attempts to reduce paperwork or burdensome regulations might result in efforts to hide redlining.

One commenter recommended that the agencies adopt a more relaxed standard for the number of inadvertent mistakes in submitted HMDA/Loan Application Register (LAR) data that would require resubmission of the data.

One commenter, a state banking association, indicated that corporations, limited liability companies, and partnerships ought to be exempted from Regulation B's spousal signature requirements in order to both better align the regulation with the ECOA and assist banks to take an appropriate interest in collateral securing a loan.

B. Loans in Areas Having Special Flood Hazards

Background

As indicated in section E of the report, the agencies received over 10 comments from banking industry trade

[203] 12 CFR part 27; 12 CFR part 128 (including other nondiscrimination requirements); 12 CFR part 202; 12 CFR part 338; 12 CFR part 390, subpart G.

[204] 80 FR 66127 (October 28, 2015).

associations and regulated institutions on the agencies' flood insurance rules. Some of these comments noted that the current flood insurance system should be changed and that lenders should not bear the responsibility for requiring that property be covered by flood insurance. Some commenters requested that certain types of properties be excluded from the mandatory flood insurance requirement. One commenter specifically requested that the current $5,000 original loan principal value threshold for the flood insurance requirement to apply be increased. Some commenters also requested that certain types of loans (renewals and extensions) be exempted from required flood insurance notices. Several commenters asked that the agencies provide more guidance to the industry on flood insurance requirements and that the agencies update their Interagency Flood Q&As. These comments are detailed below.

Flood insurance—generally

Several commenters stated that the federal government needs to reconsider the federal flood insurance regime. One commenter, a banking industry trade association, stated that the flood insurance requirements in general are burdensome for bankers and that the duty to monitor flood insurance should be placed on the insurance industry and not the banking industry. This commenter noted that the current monitoring process, which is based on property financing, does not capture all properties in a flood zone because buildings without a mortgage from a regulated lending institution are not required to have flood insurance. One commenter noted that banks should be permitted to manage flood risk in the same manner as other property risks insured by a hazard insurance policy. Another commenter stated that banks need to be, but the commenter does not believe they should have to be, experts in flood insurance because the penalties are so severe that banks cannot risk error. Another bank commenter argued that flood insurance should be private and not subsidized by taxpayers. Another commenter questioned why flood insurance is required, while earthquake insurance is not, when the risk of earthquakes in some states, like California, poses a greater risk of loss than floods.

Flood insurance—exemption

By statute, flood insurance is not required for loans with an original principal balance of $5,000 or less and a repayment term of one year or less. One banker recommended that this $5,000 exemption should be raised to reflect inflation.[205] The banker stated that when the threshold was established, the average price of a home was approximately $24,000.

Required amount of flood insurance

The agencies' regulations state that the maximum amount of insurance available is limited by ''the *overall value* of the property securing the designated loan minus the value of the land on which the property is located.'' [206] Two banking industry trade associations commented that determining the insurable value of a property is difficult for bankers. One trade association specifically noted that, although the Interagency Flood Q&As sought to define ''overall value'' and provide additional guidance to the industry on regulatory expectations for making and documenting insurable value determinations, in practice, the Interagency Flood Q&As do not provide adequate clarity, and banks report that examiners increasingly challenge lender insurable value calculations. This trade association recommended that the agencies work with the Federal Emergency Management Agency (FEMA) to require insurance agents to provide the insurable value of a building on the declarations page for any NFIP policy, and that the agencies issue guidance informing lenders that they may rely on this valuation unless they have reason to believe that the figure clearly conflicts with other available information.

Detached structures

A banking industry trade association suggested that the regulators provide more guidance on the new exemption from the mandatory flood insurance purchase requirement for detached structures, as provided by HFIAA.[207]

Unused, dilapidated, low-value, or worthless buildings

A banking industry trade association, as well as a banker, stated that flood insurance regulations should not require borrowers to insure unused, dilapidated, low-value, or worthless buildings located in a SFHA.[208]

Tenant-owned buildings

A trade association stated that borrowers should not be required to procure flood insurance when a tenant of the borrower has erected a building on the real property securing the borrower's loan, and the tenant claims to retain ownership of the building.[209]

Collateral taken by the lender in an ''abundance of caution''

A banking industry trade association noted that the agencies' appraisal regulation includes an exception to the requirement for an appraisal if the collateral is taken by the lender in an ''abundance of caution.'' The Flood Disaster Protection Act (FDPA), in contrast, requires lenders to obtain flood insurance on all property located in an SFHA taken as collateral for a loan, which includes property held as collateral in an ''abundance of caution.'' The commenter notes that lenders are therefore required to determine the valuation of this collateral for flood insurance purposes even though they are not required under the appraisal rules to obtain an appraisal. The commenter recommends that the agencies provide an exception from the flood insurance purchase requirement for buildings taken as collateral in an ''abundance of caution'' in order to be consistent with the appraisal rules.[210]

[205] The agencies note that if Congress were to increase this $5,000 exemption for inflation, the amount of the exemption would be approximately $10,600 in 2016.

[206] 12 CFR 22.3; 12 CFR 208.25(c); 12 CFR 339.3.

[207] The agencies issued final regulations implementing this exemption in July 2015, 80 FR 43216 (July 21, 2015), after this commenter submitted its letter in September 2014. The preamble to the final rule provides guidance to the industry on this provision. Furthermore, the agencies addressed the detached structures provision in a webinar that the agencies hosted in October 2015 and in a newsletter article in April 2016. The materials and transcript of this webinar, ''Interagency Flood Insurance Regulation Update,'' may be found at *https://consumercomplianceoutlook.org/outlook-live/2015/interagency-flood-insurance-regulation-update/*; *https://consumercomplianceoutlook.org/2016/first-issue/interagency-flood-insurance-regulation-update-webinar-questions-answers/*.

[208] The agencies note that Interagency Flood Q&A 24 provides a suggestion for lenders with respect to buildings with limited utility or value. Furthermore, recent changes to the flood insurance law under HFIAA, which provided a new exemption for certain residential detached structures and which the agencies implemented in a final rule in July 2015, 80 FR 43216 (July 21, 2015), should further alleviate these concerns for residential properties.

[209] The agencies note that, under the federal flood insurance statutes, if a building secures a borrower's loan, flood insurance is required if the building is in an SFHA in which flood insurance is available under the NFIP. If the building does not secure the borrower's loan, then the borrower is not required to obtain flood insurance for that building. Whether a building built by a tenant secures the borrower's loan will depend on the borrower's loan documents.

[210] The agencies note that Interagency Flood Q&A 41 clarifies that both the FDPA and the agencies' regulations look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA in which flood insurance is available under the NFIP, then flood insurance is required.

Force placement of insurance

One commenter noted that the regulation does not address when a lender should send to the borrower the renewal letter if the force-placed insurance will be coming up for renewal and the loan is not maturing. The commenter stated that the agencies need to clarify whether the lender should send the letter 45 days prior to the expiration of the force-placed policy or at the expiration date. The commenter also requested that the agencies define the difference between requirements in connection with a Mortgage Portfolio Protection Program policy (the NFIP force-placed flood insurance product available to lenders) and a private force-placed insurance policy when defining the 45-day renewal letter. Some force-placed insurance policies are obtained from private insurers.

Notices for loan renewals and extensions

Two banking industry trade associations questioned the purpose of the flood insurance notice in the case of renewals and extensions, especially if the renewal is with the same lender, the property in question is already covered by flood insurance, and the flood insurance requirements remain unchanged from the original loan because the amount of the existing loan will not change. A bank commented that sending a new notice for renewals and extensions with no changes confuses the borrower and could delay the transaction. These commenters suggested that the agencies revise the flood regulations to remove the notice requirements with respect to such loan renewals and extensions. Another commenter noted that the supplementary notice required for commercial loan properties in flood zones for every renewal, increase, or extension is not beneficial as long as the existence of the current flood insurance is verified by the bank, and the lender obtains life of loan determinations at inception.[211]

Flood insurance—guidance

A number of bankers and banking industry trade associations stated that the industry needs clearer and more comprehensive guidance on flood insurance. Bankers specifically requested guidance on the escrow and force-placed insurance provisions, especially since the enactment of the Biggert-Waters Act and HFIAA. One bank specifically noted that it was challenging to know the effective dates of new requirements included in these laws. A number of commenters requested that FEMA and the agencies work together in issuing guidance, and that enhanced communication is needed among FEMA, the agencies, and banking institutions. Two banking industry trade associations suggested that the agencies work with FEMA to update and maintain the Mandatory Purchase of Flood Insurance Guidelines (guidelines), a FEMA publication that FEMA rescinded in 2013. One trade association specifically noted that although the banking industry appreciates the guidance provided by the Interagency Flood Q&As as *specific* questions and answers, it lacks the comprehensiveness of the guidelines. One banker stated that it relied upon the guidelines to comply and that lenders "desperately need updated guidelines."[212]

Interagency Flood Q&As—in general

One banking industry trade association noted that the Interagency Flood Q&As are outdated and in need of reworking. A banker also noted that the Interagency Flood Q&As have not been updated to reflect the Biggert-Waters Act and HFIAA changes.[213]

Loan syndications and participations

Interagency Flood Q&A 4 addresses the flood insurance obligations of lenders for loan syndications and participations.[214] It states that examiners will look to see whether the participating lender engaged in due diligence to determine whether the lead lender ensures that the borrower obtains appropriate flood insurance and monitors for ongoing maintenance of flood insurance. A banking industry trade association suggested that the responsibility for flood requirements should be only on the lead agent or lender, and that participants should not be required to demonstrate that they have exercised due diligence and adequate controls over the lead lender. This commenter specifically requested that the agencies revise this Q&A to remove the language expressly providing for an examination of each participating lender as duplicative and unnecessarily burdensome.

Consumer Outreach

One banking industry trade association suggested that the agencies do a better a job of educating consumers on the reasons for, and requirements of, flood insurance.[215]

C. Safeguarding Customer Information

The Interagency Guidelines Establishing Information Security Standards (interagency guidelines) set forth standards pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act[216] and section 39 of the FDI Act.[217] These interagency guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.[218] The guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621 and 628 of the Fair Credit Reporting Act (FCRA).[219]

One commenter asserted that core processors should be required to get their supervisory reports faster and provide banks with copies of their internal audits, so the banks can identify the core processor's deficiencies and remediation plans. The commenter also asserted that core processors should be required to timely notify banks when the core processor's system has been compromised. The commenter had not been successful in requiring this information by contract from the bank's core processor.

D. Fair Credit Reporting Act

Subpart I of the agencies' regulations that implement section 615 of the FCRA imposes duties on the user of a consumer credit report with respect to disposal of consumer information.[220] Subpart J of the agencies' regulations

[211] These notices are statutorily required. See 42 U.S.C. 4104a(a)(1).

[212] The agencies note that the preamble to the agencies' final rule to implement the escrow and force-placed insurance provisions of the Biggert-Waters Act, 80 FR 43216 (July 21, 2015), and the Interagency Flood Q&As provide additional guidance on these provisions. The agencies also note that on March 29, 2013, they issued an interagency statement to inform financial institutions about the effective dates of the Biggert-Waters Act provisions. (See OCC Bulletin2013–10; CA letter 13–2 (Board); FIL–14–2013 (FDIC)), and held an interagency webinar that discussed these matters (see reference to webinar materials and transcript in footnote 206).

[213] As noted in section E of the report, the agencies have begun revisions on the Interagency Flood Q&As. The agencies will continue work on these revisions as they finalize the recently proposed private flood insurance rule.

[214] 74 FR at 35935 (July 21, 2009).

[215] The agencies note that FEMA provides various guidance for consumers on flood insurance requirements. See *https://www.fema.gov/information-property-owners*, *https://www.floodsmart.gov/floodsmart/*, and *www.fema.gov/national-flood-insurance-program-flood-insurance-advocate*.

[216] 15 U.S.C. 6801 and 6805.

[217] 12 U.S.C. 1831p–1.

[218] 12 CFR part 30, appendix B; 12 CFR part 208, appendix D-2; 12 CFR part 225, appendix F; 12 CFR part 364, appendix B.

[219] 15 U.S.C. 1681s and 1681w.

[220] 12 CFR part 41, subpart I; 12 CFR part 222, subpart I; 12 CFR part 334, subpart I.

implements the Identity Theft Prevention Program (Identity Theft Red Flags Program) requirements and the duties of card issuers regarding changes of address that are mandated by the FCRA.[221] These regulations require that each financial institution and creditor that offers or maintains one or more covered accounts develop and provide for the continued administration of a written program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. An appendix to this subpart contains guidelines to assist financial institutions and creditors in the formulation and maintenance of this program.[222] The regulations also require a card issuer to establish and implement reasonable policies and procedures to assess the validity of a change of address and prohibit a card issuer from issuing an additional or replacement card until it notifies the cardholder or otherwise assesses the validity of the change of address in accordance with its policies and procedures.

One commenter expressed the opinion that community banks are held to a higher standard than nonbanks with regard to FCRA notice requirements generally, because banks are regularly examined for compliance.

One commenter opposed the requirement that a bank provide an annual report to its board of directors summarizing the bank's Identify Theft Red Flags Program. The commenter expressed the opinion that the requirement is obsolete because a bank's board of directors should already be aware of significant issues that arise under the Identify Theft Red Flags Program.

FDIC Regulations

Deposit Insurance Coverage

Part 330 clarifies the rules and defines the terms for deposit insurance coverage pursuant to the FDI Act. The insurance coverage provided by the act and part 330 is based upon the ownership rights and capacities in which deposit accounts are maintained at IDIs. In accordance with the statutory and regulatory framework, all deposits in an IDI that are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) are added together and insured.

The agencies received two comments regarding the FDIC's rule on deposit insurance coverage, 12 CFR part 330. The first comment was a general comment suggesting that the FDIC simplify the deposit insurance rules, noting that the deposit insurance rules for trust accounts are particularly complex. The second comment suggested a 24-hour turnaround time for the FDIC to answer a bank's request for advice on account structures with regard to deposit insurance.

8. Directors, Officers, and Employees

Interagency Regulations or Regulations Implementing the Same Statute

A. Limits on extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements

The Board's Regulation O[223] implements sections 22(g) and (22(h) of the Federal Reserve Act, which places restrictions on extensions of credit made by a member bank to an executive officer, director, principal shareholder, of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. Federal law also applies these restrictions to state nonmember banks, FSAs and state savings associations. OCC and FDIC regulations enforce these statutory and regulatory restrictions with respect to national banks and FSAs, and to state nonmember banks and state savings associations, respectively.[224] The agencies received numerous comments on their regulations related to directors and officers, summarized below.

Raise the Regulation O threshold extension of credit limit, both with and without prior approval

Several commenters suggested that the *de minimis* transaction limit in Regulation O be increased. One suggested increasing the threshold to $250,000. Several suggested that the amount be indexed for inflation. Many commenters suggested raising the prior-approval threshold to $750,000 or $1.2 million depending on the location of the bank. One commenter suggested expanding the applicability of the threshold limitations to principal shareholders, directors, and executive officers.

Additional comments on Regulation O

The agencies received other comments on Regulation O. One commenter suggested that the agencies should create a Regulation O summary chart to communicate limitations.[225] Two commenters indicated that the overdraft restriction provision was no longer necessary and should be eliminated. One commenter suggested that Regulation O is difficult to interpret and can cause unintended violations. The commenter suggested clarifying (1) what constitutes control of an entity for determining which entities are related entities and which entities are affiliates of the bank; (2) who is an executive officer who ''participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank''; (3) how the application of 12 CFR 215.5(c)(2) applies to Texas home equity and construction liens; and (4) the scope and applicability of the ''tangible economic benefit rule.''

B. Management Official Interlocks

In general, pursuant to the DIMIA,[226] agency regulations prohibit a management official of a depository institution or depository institution holding company from serving simultaneously as a management official of another depository organization if the organizations are not affiliated and both either are very large or are located in the same local area.[227]

The agencies received one comment letter regarding the management interlock regulations, from a trade association. The commenter suggested that because non-U.S. affiliates of the depository organizations are included in the major assets prohibition there should be an exception to the interlocks rule for depository organizations' foreign affiliates that are not engaged in business activities in the United States. The commenter also suggested that the agencies update the asset thresholds in the major assets prohibition to reflect the changes in the banking industry since the regulations were promulgated.[228]

OCC Regulations

A. National Bank Activities and Operations—Corporate Practices

12 CFR part 7, subpart B, sets forth corporate governance procedures that are consistent with safe and sound

[221] 12 CFR part 41, subpart J; 12 CFR part 222, subpart J; 12 CFR part 334, subpart J.

[222] 12 CFR part 41, appendix J; 12 CFR part 222, appendix J; 12 CFR part 334, appendix J.

[223] 12 CFR part 215.

[224] See 12 CFR part 31; 12 CFR 337.3; and 12 CFR 390.338.

[225] As indicated in section E of the report, the agencies are working to provide a chart or similar guide on the statutorily required rules and limits on extensions of credit made by an IDI to an executive officer, director, or principal shareholder of that IDI, its holding company, or its subsidiaries.

[226] 12 U.S.C. 3201 et seq.

[227] 12 CFR part 26; 12 CFR part 212; 12 CFR part 238, subpart J; 12 CFR part 348.

[228] As indicated in section E of the report, the agencies plan to propose amending their management interlocks rules to adjust these thresholds.

banking practices. The agencies received two comments on this subject.

One commenter, a nonprofit organization, noted that 12 CFR 7.2000, which explains the OCC's general corporate governance procedures, may limit the ability of national banks to adopt a benefit corporation or mission-aligned status. The commenter stated that there is no reason to treat entities with mission-aligned structures differently than corporations formed in jurisdictions with constituency statutes. The commenter also stated that mission-aligned structures: (1) Give directors more, rather than less, power to consider safety and soundness; (2) make directors accountable with respect to such considerations unlike constituency statutes; and (3) gives corporations a greater ability to serve the community and meet CRA goals. The commenter suggested that the OCC clarify the application of 12 CFR 7.2000 to mission-aligned structures.

Another commenter, a federal savings bank, recommended that there should be a transition period if an institution falls below the five-director minimum to allow the institution to fill the vacancy without having a violation of law.

B. FSA Employment Contracts, Compensation, Pension Plans

12 CFR 163.39 sets forth specific requirements for employment contracts between an FSA and its officers or other employees. One commenter, a financial institution, commented on these regulations. This commenter stated that the OCC should eliminate its employment contract regulation as it applies only to FSAs and there is no reason to distinguish FSAs from banks. It noted that the requirement for board approval of all employment contracts is unnecessary given the existence of comprehensive guidance on compensation.

FDIC Regulations

Golden Parachute and Indemnification Payments

The Crime Control Act of 1990 authorized the FDIC to prohibit or limit indemnification payments (as well as golden parachute payments). Consistent with the statute, the FDIC's regulations[229] define a ''prohibited indemnification payment'' as any payment for the benefit of a covered institution's current or former directors to pay or reimburse those individuals for (1) any civil money penalty or judgment; or (2) any other liability or legal expense. The regulations also identify circumstances where payments are not prohibited indemnification payments. The OCC and Board apply part 359 to their regulated institutions and holding companies.

Two commenters participating in the EGRPRA outreach sessions addressed the restrictions on indemnification payments, focusing their remarks on the effect of the indemnification payment restrictions on directors. Specifically, the two commenters maintained that in order to ensure that IDIs and IDI holding companies can keep qualified individuals as their directors, and effectively attract and persuade others to become directors, institutions must be able to assure these individuals that they can insure or reimburse them for the full range of liabilities to which the directors might be exposed in serving in that important role. In particular, they stated, a director should be insured for all of a director's expected liabilities, to specifically include the payment of, or insurance coverage for, civil money penalties that might be imposed on a director.

9. Money Laundering

Comments on money laundering-related rules are discussed in this report at section I.D.

10. Rules of Procedure

Interagency Regulations or Regulations Implementing the Same Statute

Civil Money Penalties and Rules of Practice and Procedure

One commenter addressed the assessment of civil money penalties under 12 USC 1818 and the agencies implementing regulations.[230] This commenter stated that the agencies should reassess the civil money penalty rules so that the amount of an agency-assessed civil money penalty is in line with the damage done by the underlying violation.[231]

11. Safety and Soundness

Interagency Regulations or Regulations Implementing the Same Statute

A. Real estate lending standards

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the agencies to adopt uniform regulations prescribing standards for real estate lending.[232] In establishing these standards, the agencies are to consider the risk posed to the deposit insurance funds by such extensions of credit; the need for safe and sound operation of IDIs; and the availability of credit.

The agencies issued subpart A of the Real Estate Lending Standards in 1992 pursuant to section 304 of FDICIA. The rule requires each IDI to adopt and maintain comprehensive written real estate lending policies that are consistent with safe and sound banking practices and that meet specified standards for loan-to-value (LTV). The institution's board of directors must review and approve these policies at least annually. In order to supplement and clarify the standards stated in the subpart A, the agencies adopted Interagency Guidelines for Real Estate Lending Policies (guidelines). The guidelines describe the criteria and specific factors that the agencies expect insured institutions to consider in establishing their real estate lending policies.

The agencies received comments from two bankers and one trade association relating to real estate lending standards. One commenter suggested that the supervisory LTV ratio for raw land is too low. The same commenter noted the existing supervisory LTV for commercial real estate is 85 percent, and suggested a new supervisory LTV threshold of 90 percent and that a 10 percent down payment on commercial real estate would be sufficient in rural communities. The commenter suggested that performing loans whose LTV ratio exceeds the supervisory LTV threshold based on a new appraisal received after the loan's origination should be exempt from reporting requirements.

One commenter suggested that the regulations should incorporate real estate exposures in the investment portfolio. The commenter also suggested that banks with limited exposure (in the investment portfolio) should be evaluated differently than banks with collateralized debt obligations or other off-balance-sheet real estate exposures.

Another commenter requested that the agencies remove the annual board approval requirement (noted above) if there has not been a change in bank procedure or policy or if the bank has not introduced new products or entered new geographic locations.

[229] 12 CFR part 359.

[230] 12 CFR part 19, 12 CFR part 109, 12 CFR part 263, 12 CFR part 308, 12 CFR 390.30.

[231] Current law and agency process already take into account the damage inflicted by the underlying violation in setting the amount of a civil money penalty. See 12 U.S.C. 1818(i).

[232] 12 CFR part 34, subpart D; 12 CFR part 208, subpart E and appendix C (Reg. H); 12 CFR part 365; 12 CFR 160.100; 12 CFR 163.101; 12 CFR part 390, subpart P.

B. Transactions with affiliates

Sections 23A and 23B of the Federal Reserve Act [233] and the Board's Regulation W [234] provide the framework for transactions between all IDIs and their affiliates. Regulation W specifically sets forth the regulatory requirements for transactions between IDIs and their affiliates for the agencies, and OCC rules [235] refer to this Board rule. The agencies received several comments related to this regulation.

A few commenters suggested that the form FR Y–8 (Bank Holding Company Report of Insured Depository Institutions Section 23A Transactions with Affiliates) should not be required if no affiliate transactions subject to Section 23A have occurred or if relevant information has not changed since the previous quarter's report. A commenter also suggested that the Board issue a simplified version of Regulation W for non-complex community banking organizations. Finally, a commenter argued that the lack of clarity concerning the definition of ''control'' for purposes of Regulation W may cause banking organizations to over-report or under-report the occurrence of affiliate transaction subject to Regulation W.

C. Safety-and-Soundness Standards

Pursuant to section 39 of the FDI Act, the agencies have established safety-and-soundness standards in guidelines adopted after notice and comment relating to (1) operation and management; (2) compensation; and (3) asset quality, earnings, and stock valuation.[236] One commenter, a bank, requested the agencies to clarify the concept of ''excessive compensation'' in these guidelines.

OCC Regulations

Lending Limits

In general, section 5200 of the Revised Statutes [237] provides that the total loans and extensions of credit by a national bank to a person outstanding at one time shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the bank if the loan is not fully secured plus an additional 10 percent of unimpaired capital and unimpaired surplus if the loan is fully secured. Section 5(u)(1) of the HOLA [238] applies section 5200 of the Revised Statutes to savings associations. OCC regulations at 12 CFR part 32 implement these statutes for national banks and state savings associations and FSAs.[239]

The agencies received two comments on the OCC's lending limits rule from bankers who both stated that there is a need for consistency in the legal lending limits area with respect to federal and state lending limits.[240] They also noted that the lending limits rules can hinder participation with small banks, particularly given new capital requirements.

FDIC Regulations

A. Annual Independent Audits and Reporting Requirements

Part 363 of the FDIC's regulations implements section 36 of the FDI Act and imposes annual audit and reporting requirements on IDIs with $500 million or more in consolidated total assets (covered institution). Section 36 grants the FDIC discretion to set the asset size threshold for compliance with these statutory requirements, but states that the threshold cannot be less than $150 million. Specifically, part 363 requires each covered institution to submit to the FDIC and other appropriate federal and state supervisory agencies an annual report comprised of (1) audited financial statements and (2) a management report containing specified information. The management report for an institution with $1 billion or more in consolidated total assets must include additional specified information.

Two commenters requested revision of the annual audit and reporting requirements to (1) exclude IDIs that are public companies or subsidiaries of public companies that file annual and other periodic reports with the SEC and that are subject to the requirements of the Sarbanes-Oxley Act of 2002 (SOX); (2) raise the asset size threshold for complying with part 363 from $500 million to $1 billion; and (3) conform the internal control over financial reporting requirements of part 363 with the SEC's requirements under section 404(b) of SOX.

B. Unsafe and Unsound Banking Practices, Brokered Deposits

The agencies received input from 12 commenters on the FDIC's rule on brokered deposits. Brokered deposits are defined by statute as a deposit accepted through a deposit broker.[241] Some commenters suggested that certain statutory definitions be updated and that the FDIC update its interpretations on whether certain deposits are classified as brokered or not. In addition, some commenters suggested that the FDIC exclude reciprocal deposits, and other types of brokered deposits, including deposits placed by exclusive third-party agents and deposits in transaction accounts, from being classified as brokered deposits. Another commenter suggested that the FDIC clarify whether certain entities (described below) are considered deposit brokers. The FDIC's May 2016 final rule on deposit insurance assessments for established small banks addressed another EGRPRA comment related to brokered deposits. In June 2016, the FDIC finalized updates to the Frequently Asked Questions on Brokered Deposits that considered definitional and other issues raised by EGRPRA commenters.[242]

Four commenters argued that the definition of brokered deposits needs to be updated in light of modern banking requirements.

Another commenter recommended that the FDIC clarify that a dual-hatted employee (one that is employed exclusively by the bank but performs functions for an affiliate or an associated party) is not a ''deposit broker'' when the employee receives compensation that is primarily in the form of a salary and does not share his/her salary with an affiliate or an associated party; exclude call center employees or a bank employees that share office space with a broker–dealer from the definition of deposit broker; and exclude government agencies that administer benefits programs from the definition of deposit broker.

Five commenters suggested four different areas where the FDIC should reduce the impact of the brokered deposit classification. Two commenters recommended that the FDIC reduce the assessment and run-off rates associated with certain specified brokered deposit products because they provide liquidity

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[233] 12 U.S.C. 371c and 371c–1.

[234] 12 CFR 223.

[235] 12 CFR part 31 (national banks), 12 CFR 163.41 (FSAs). (The OCC EGRPRA final rule removes 12 CFR 163.41 and applies 12 CFR part 31 to FSAs, effective April 1, 2017.) 12 U.S.C. 18(j) applies sections 371c–1 to nonmember insured banks ''in the same manner and to the same extent'' as member banks.

[236] Safety-and-soundness standards—12 CFR part 30, appendix A; 12 CFR part 209, appendix D–1 (Regulation H); 12 CFR part 364; 12 CFR part 170.

[237] 12 U.S.C. 84.

[238] 12 U.S.C. 1464(u)(1).

[239] The OCC has rulemaking authority for lending limit regulations applicable to national banks and to all savings associations, both state- and federally chartered. However, the FDIC, not the OCC, enforces these rules as to state savings associations.

[240] The lending limits for national banks and for federal and state savings associations are statutory. Lending limits for state chartered banks are set by the appropriate state regulator. The OCC notes that its rule at 12 CFR 32.7, pursuant to 12 U.S.C. 84(d)(1), provides a ''Supplemental Lending Limit Program'' to provide some parity with state lending limits.

[241] 12 U.S.C. 1831f.

[242] FDIC FIL-42-2016, ''Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits,'' *www.fdic.gov/news/news/financial/2016/fil16042.html.*

to banks and allow small banks to compete. Another commenter recommended that ''adequately capitalized'' banks should have fewer limitations on their ability to accept brokered deposits. A commenter suggested that if the FDIC does not exclude reciprocal deposits from its definition of brokered deposits, the FDIC should loosen its criteria for brokered deposit waivers in recognition of the difference between reciprocal deposits and regular brokered deposits. Another commenter recommended that brokered deposits should not retain its classification as a brokered deposit permanently, particularly when a deposit is renewed.

Further, another commenter recommended that the FDIC review its application of the primary purpose exception to brokered deposits to determine whether the exception has been applied consistently in the past and whether it can be applied more broadly moving forward while still achieving the purpose of the statute.

12. Securities

Interagency Regulations or Regulations Implementing the Same Statute

A. Banks as securities transfer agents

Section 17A (15 U.S.C. 78q–l) of the Securities and Exchange Act of 1934 requires all transfer agents to register with the appropriate regulatory agency. Depending on the case, the appropriate regulatory agency may be one of the agencies or the SEC. The agencies each have issued separate rules adopting registration and reporting requirements consistent with section 17A.[243]

The only commenter on these rules, a banking trade association, requested that the agencies make clear that SEC Rule 17Ad–16 is intended to require the filing of a particular notice with the Depository Trust Company (DTC) only in cases where there is a change of name or address or where the filing transfer agent is the successor to a previous transfer agent. The commenter asserted that SEC staff and the FDIC have interpreted SEC Rule 17Ad–16 as requiring transfer agents to provide the notice to the DTC for every new engagement even though that interpretation is inconsistent with the plain language of the rule. The commenter also asserted that the interpretation results in a waste of both time and money because the DTC does not need the notice and simply disposes of it. The commenter stated that it intends to seek an identical interpretation of the scope of this rule directly from the SEC in response to a recent SEC advance notice of proposed rulemaking.[244]

B. Recordkeeping and Confirmation of Securities Transactions Effected by Banks

The agencies each have issued substantively similar rules to require institutions under their respective jurisdictions to establish uniform procedures and recordkeeping and confirmation requirements with respect to effecting securities transactions for customers.[245] The agencies' rules each contain exceptions for institutions affecting a small number of securities transactions per year. The agencies patterned their requirements on the SEC's rules applicable to broker–dealers.

Two commenters, both trade associations, addressed the agencies' rules. Both commenters requested the reduction and/or simplification of specific notification requirements. More specifically, one of the commenters requested that the agencies permit banks to send securities transaction statements less frequently and the other commenter raised concerns with statements and disclosures required for certain sweep accounts.

Frequency of securities transaction statements

One commenter requested that the agencies reduce the frequency of securities transaction statements required by 12 CFR 12.5(c), 12 CFR 208.34(e)(3), 12 CFR 344.6 (c)(1), and 12 CFR 151.100(e). Under these provisions, banks that effect securities transactions in an agency capacity are required to send itemized statements at least every three months to their customers specifying the securities in the custody of the bank at the end of the reporting period, as well as debits, credits, and transactions during the period. The commenter stated that many bank customers have requested that they receive the statements less frequently because ''they do not wish to be inundated with paper statements and feel that they already receive too many from various sources.'' The commenter asked the agencies to lengthen reporting periods, such as an annual statement, if selected by the customer.

Notification and disclosure requirements for sweep accounts under 12 CFR 344.6 (and analogous rules)

Section 344.6 requires every FDIC-supervised institution effecting a cash management sweep to make certain disclosures to its customers for each month in which a purchase or sale of securities takes place, and not less than once every three months if there are no securities transactions in the account. One commenter, a banking trade association, raised concerns with these notification and disclosure requirements for these sweep accounts set forth in 12 CFR 344.6. The commenter asserted that some community bankers question ''the necessity and burden'' of the notification requirements under 12 CFR 344.6 that deal with cash management sweep accounts. The letter does not request a specific type of relief. The Board's and OCC's rule for national banks is similar to 12 CFR 344.6. However, the OCC's rule for FSA, 12 CFR 151.100, originally adopted by the former OTS, allows a FSA to satisfy its disclosure obligations under 12 CFR 151.70 for sweep accounts on a quarterly basis. The FDIC's and Board's rules, as well as the OCC's rule for national banks, are intended to mirror substantially the reporting requirements under the SEC's Rule 10b–10.[246]

Reduce and/or simplify the notification and disclosure requirements for sweep accounts under 12 CFR 360.8

12 CFR 360.8 [247] requires IDIs to disclose whether funds in sweep accounts are deposits and, if not, whether the funds would have general creditor or secured creditor status in the event of a failure. This rule also requires disclosures to be made each time a sweep agreement is renewed. FDIC FIL–39–2009 (July 6, 2009) clarifies the requirements for properly executing certain sweeps and provides that certain of the disclosure requirements in 12 CFR 360.8 apply on a transactional basis. Thus, for certain daily sweeps (i.e. repo sweeps) a bank must make daily disclosures.

A banking trade association raised concerns with the notification and disclosure requirements for certain sweep accounts discussed in FIL–39–2009. Specifically, the commenter asserted that some community bankers believe that the disclosure requirements described in FIL39–2009 are

[243] 12 CFR 9.20; 12 CFR 208.31 (Reg. H); 12 CFR part 341.

[244] 80 FR 81948 (December 31, 2015).

[245] 12 CFR part 12; 12 CFR part 151; 12 CFR 208.34 (Reg. H); 12 CFR part 344.

[246] 17 CFR 240.10b–10. See 61 FR 63962 (December 2, 1996). Rule 10b–10 required monthly reporting when 12 CFR 12.5(e) was adopted and continues to require monthly reporting today.

[247] 12 CFR 360.8 is an FDIC rule with no OCC or Board analog.

burdensome and that customers often request that daily confirmation notices be ''turned off'' when sweeps take place on a daily basis. The commenter suggested that the FDIC simplify sweep account disclosure requirements so that community banks can automatically renew daily sweeps without having to confirm each renewal on a daily basis.

C. Securities Offerings

The agencies securities offering rules set forth securities offering disclosure requirements and are based on the Securities Act and certain SEC rules.[248] One commenter, a banking trade association, recommended that the agencies establish a mechanism by which banks may electronically file registration statements, offering documents, notices and other documents related to the sale of securities issued by a bank. The commenter asserted that the agencies' regulations should keep pace with changes in technology and noted that an electronic filing mechanism would align the agencies with the SEC and the Municipal Securities Rulemaking Board, both of which have long allowed securities issuers to file offering documents electronically.[249]

Board Regulations

Regulation U

A commenter who represented a bank suggested that the Board increase the threshold value of margin stock that triggers the requirement under 12 CFR 221.3(c) of the Board's Regulation U that a bank's customer file Form FR U–1 (OMB No. 7100-0115) in connection with an extension of credit by a bank that is secured directly or directly by margin stock.[250] In general under § 221.3(c) of Regulation U, a borrower that enters into an extension of credit with a bank or with certain nonbank lenders (1) for the purpose of buying or carrying margin stock—*i.e.,* stocks listed on exchanges, stocks designated for trading in the National Market System, certain convertible bonds, and most mutual fund shares—and (2) secured directly or indirectly by any margin stock must execute a statement of purpose for an extension of credit in the form prescribed by the Board. The commenter suggested that the Board increase the threshold value of margin stock that triggers the filing requirement from $100,000 to $500,000.

[248] 12 CFR part 16; 12 CFR part 390, subpart W.

[249] As indicated in section E of this report, the OCC EGRPRA final rule incorporates this comment.

[250] 12 CFR part 221.

13. Additional Comments Received From the EGRPRA Review

The agencies received other comments that were not within the 12 categories of rules published for comment. This section summarizes these comments.

A. EGRPRA Process

The agencies received several comments recommending changes to the EGRPRA review process. Some commenters suggested that the review process should be expanded to include the CFPB and FinCEN. Other commenters suggested that the agencies modify the review process to allow the public greater access to outreach meetings and the ability to track key issues and comments received from the public. The agencies also received comments on other issues, such as whether newly issued rules should be included as part of the EGRPRA review, and whether there should be an independent EGRPRA director in charge of the review process or an ''EGRPRA czar'' to handle disputes.

Furthermore, one commenter suggested that the agencies conduct an EGRPRA review each year. Two commenters suggested that the agencies should review not just each regulation specifically, but the overall burden of rules. Finally, one commenter suggested that the EGRPRA review also should consider where regulations need to be strengthened.

B. Increase Dollar Thresholds

The agencies received several comments suggesting that the agencies increase all dollar thresholds in their regulations. Two trade associations urged that all regulatory thresholds should be regularly updated for inflation or tied to a pricing index. One bank specifically suggested that the agencies should raise the threshold for a loan examined in the Shared National Credit program.

C. Regulate Shadow Banking

The agencies received several comments recommending that the agencies regulate the shadow banking industry. ''Shadow banking'' generally refers to a diverse set of entities and markets that collectively carry out traditional banking functions outside of, or in ways loosely connected to, the traditional banking system regulated by the agencies. As shadow institutions typically do not have banking licenses and do not take deposits, they are not subject to the same regulations as traditional IDIs. These commenters argued that nonbank entities that offer products that compete with banks should be subject to regulatory requirements similar to that of banks. Some commenters suggested that the Dodd-Frank Act has benefited the shadow banking system by increasing the regulatory burden on community banks without subjecting shadow banking entities to similar requirements.

D. Regulatory Structure

The agencies received several comments suggesting that the agencies take steps to simplify the federal regulatory oversight of banks. One commenter suggested that each bank have just one regulator. Some commenters proposed simplifying the federal oversight of banks through legislation that reduces the number of federal banking regulators. The agencies also received several comments suggesting that the agencies could improve the federal regulatory oversight of banks and reduce unnecessary burden if they developed a stronger working relationship with the entities that they regulate and with other federal agencies.

Several other commenters suggested that the agencies should review regulations to make sure they are written clearly.

Some commenters suggested that the agencies be required to follow a cost-benefit analysis when issuing regulations. These commenters stated that the agencies only should issue new regulations if the benefits of a proposed rule outweigh the costs and unintended consequences of such a proposed rule.

One commenter suggested that the agencies allow more public participation in rulemakings. The commenter asserted that involving more people within the banking industry to participate in the rulemaking process in addition to the traditional notice-and-comment process would provide the agencies with a variety of perspectives.

E. Responsibilities of Boards of Directors

Several commenters suggested that the agencies consider the burden many regulations place on a bank's board of directors and distinguish between board and management responsibilities.

One commenter recommended that, for future rulemakings, the Board consider the impact of the rule on bank directors and that the Board should not implement regulations unless the benefits outweigh the burdens on banks' boards. The commenter also suggested that the Board clearly identify and provide guidance on the specific burdens that each new regulation will impose on banks' boards. Four commenters suggested that the Board should provide public notice of any regulations that impact a board of directors.

Three commenters suggested that restrictive regulations are making it difficult to hire talented workers.

One commenter recommended that, for future rulemakings, the Board consider the impact of the rule on bank directors and that the Board should not implement regulations unless the benefits outweigh the burdens on banks' boards. The commenter also suggested that the Board clearly identify and provide guidance on the specific burdens that each new regulation will impose on banks' boards.

Eight commenters suggested that the Board should avoid implementing regulations that ''blur the line'' between director responsibilities, and management responsibilities. A commenter cited as an example the Board's Commercial Bank Examination Manual regarding board responsibilities for contingency plans for computer services.

One commenter also stated that there should be governance clarity between the board of directors and management. Currently, directors make policy and approve actions, such as loans, which is an overreach of good board governance.

F. Fair Lending

One commenter, a bank, indicated that ''[b]anks, the real estate and automotive industries are pawns in this controversial political football,'' with supervisory agencies second guessed by internal and external parties. This commenter proposed that Congress strive ''to create legislative clarity on this important topic on which we all waste vast resources.'' Another commenter, also a bank, indicated that although fair lending laws are well intended, the laws increase costs to borrowers. This commenter also indicated that it often is unable to lend to prospective borrowers because imposing higher charges on these borrowers based on their higher credit risk would amount to discrimination.

One consumer group indicated that some mortgage originators continue to target minority borrowers for higher-cost loans without regard to their qualifications and that bank redlining continues to result in the denial of residential mortgage credit to qualified minority borrowers. This commenter indicated that fair lending regulations need to be enhanced and enforced, adding that the Congress should not weaken the CFPB. Another consumer group indicated that the repercussions for fair lending violations need to be strengthened. This commenter also indicated that fair lending regulations also need to address what happens after residential lending foreclosure. Another commenter indicated that the agencies should publicly post the results of fair lending examinations, including when a fair lending complaint does not result in a fair lending referral or enforcement action.

One commenter, a bank, indicated that experienced specialists rather than field examiners should review fair lending referrals to the U.S. Department of Justice (DOJ). Another commenter, also a bank, stated that the requirement to refer to DOJ all apparent or possible fair lending violations should be eliminated where violations are *de minimis* or inadvertent. A third commenter, a state banking association, indicated that subjective interpretations of fair lending practices that involve isolated acts or omissions, rather than an actual pattern of discrimination, are costly to banks in terms of reputation, legal and related fees, and fines.

G. Community Development

The agencies received a number of comments regarding community development, CDFIs, and increasing access to banking services in underserved areas.

One commenter, a nonprofit lender, explained that CDFI assessment and rating systems offer no special consideration for EQ2s (equity equivalents). The commenter recommended incentives for banks to convert EQ2s to true equity or grants over time, and to reward banks that increase the EQ2 maturity to 15 years or more. Another commenter, a law firm, recommended that EQ2 authority should be expanded, and that the OCC should permit banks to make EQ2 investments in CDFIs. It suggested that such investments should count as equity rather than debt. Currently, CDFIs carry EQ2s on the balance sheet as liabilities. Both commenters recommended that EQ2s should be treated as equity in key asset ratios because if EQ2s are treated as part of assets rather than debt, it would make it possible to add new borrowed capital to balance sheets with no change to the net balance ratio or debt to equity ratio, which would lead to additional business loans, and in turn would create new jobs. Another commenter, a nonprofit, noted that banks are not sufficiently rewarded for making EQ2 public welfare investment anymore because regulators no longer view EQ2s as innovative and complex.

One commenter, a for-profit community development corporation, recommended that new banks acquiring CDFI stock should be permitted to convert outstanding stock to newly acquired stock if a new substantial amount of investment accompanied that stock.

One commenter, a university professor, explained that regulations should increase access to capital in underserved communities, and that CDFIs need help to increase their manufacturing portfolio or promotion value activity, including the value of the supply chain in regional and local systems. Further, the commenter suggested that regulators should examine the tax credit regulations to take into consideration the tax credit markets in different cities that have different densities. The commenter noted that regulators should consider breaking the critical linkage between place-based and people-based development.

H. Rule Writing Process

One trade association suggested that proposed rules should include a table of contents at the beginning of the document for reference. Five commenters, including banks, trade associations, and community groups encouraged more simplicity and plain language in regulations, noting that the increased complexity of rules is hurting banks and driving them out of certain businesses. Several commenters suggested that the agencies review the clarity of their regulations. Some commenters recommended that the agencies reduce the burden associated with keeping track of rulemaking proposals through procedural measures designed to make regulatory updates easier for the public to access and follow.[251]

I. Tiered Regulation

Four commenters, including banks and trade associations, encouraged regulators to advance the concept of tiered regulation. Seven commenters, including banks and trade associations, highlighted burdens on community banks, including access to capital, and urged the agencies to treat community banks differently than larger institutions. One bank suggested that the agencies move away from defining requirements strictly by asset size.

J. Harmonization and Consistency

Five commenters, including banks and trade associations, encouraged the

[251] The FDIC cites to the ''FDIC Statement of Policy: Development and Review of FDIC Regulations and Policies'' as its guide for conducting regulatory analysis. See *https://www.fdic.gov/regulations/laws/rules/5000-400.html*.

agencies to harmonize regulations and standards across jurisdictions in order to level the playing fields and allow for useful comparisons. Two commenters suggested that regulators consider the need for more parity between state and national banking institutions. One bank commented that examiners apply standards inconsistently, and that the agencies should provide more examiner training to improve consistency.

K. Other Comments Applicable to Multiple Regulations or to Agency Practices

One commenter suggested that the agencies should consider easing regulatory requirements for community banks with CAMELS composite ratings of ''1'' or ''2'' and management ratings of not lower than ''2.'' One commenter asserted that the agencies should not implement enterprise risk management unilaterally on smaller community banks and suggested that the agencies recognize a bank's risk-management practices as satisfactory if the bank has a good CAMELS rating. One commenter stated that the agencies should reduce the number and frequency of third-party audits when the management of a bank is satisfactory.

One trade association noted that the agencies should review and amend regulations to protect against the fraudulent misuse of the payment system.

One law firm suggested that the agencies should include Regulation Y's exception for well-capitalized, well-managed organizations in almost every regulation that requires a notice or approval.

One bank suggested that the agencies update their regulations to account for technological advancements in order to increase efficiency.

One bank suggested that rules should include incentives for good behavior as well as penalties for improper behavior.

One banker cautioned against the use of the term ''best practices'' because rules that start out as requirements for the largest banks become best practices for smaller banks, putting smaller banks at a disadvantage.

Two commenters suggested a need for streamlining disclosures.

L. Additional EGRPRA Comments

The agencies received a number of comments regarding a variety of additional issues.

A few commenters discussed the tax exempt status of credit unions. These commenters suggested that credit unions that perform and provide largely the same services as banks should not have an advantage over banks by being tax exempt.

One commenter suggested that banks should be able to apply to the Small Business Lending Fund of 2010 despite negative retained earnings.

One commenter recommended that Congress amend 26 U.S.C. 1361(b)(1)(B) to increase the number of allowable shareholders for Sub-Chapter S banks from 100 to 200 so that community banks can attract outside capital.

One commenter suggested that the agencies create an independent body with the power to receive, investigate, and resolve complaints against the agencies. The commenter suggested that this independent body should handle complaints quickly and confidentially and should allow banks to file complaints without retribution from the agencies and their examiners.

One commenter sought additional guidance from the agencies regarding lending and providing banking services to individuals and businesses involved in the medical marijuana industry. The commenter stated that there are inconsistencies between state and federal laws and that current guidance does not provide sufficient clarity and confidence to conduct activities in connection with the medical marijuana industry.

One commenter suggested that the agencies examine a bank's earnings in the context of the current historically low interest rate environment. The commenter stated that low interest rates have compressed earnings and banks should not receive unsatisfactory earnings ratings if all other aspects of the bank are in satisfactory condition.

One commenter suggested that institutions be allowed to use media other than newspapers, such as an accessible public website, to satisfy a public notice requirement.

One commenter requested that the agencies provide responses to requests under the Freedom of Information Act more quickly in order to allow for more public participation and comment on applications.

One commenter suggested that community banks facilitate meetings between their consumer compliance officers and members of the community in order to gain a better understanding of the needs of their communities. Another community group suggested that regulators and community groups should gather to share ideas.

One commenter recommended that the agencies implement regulations that require banks to better maintain foreclosed-upon properties in their possession.

One commenter suggested that the U.S. Postal Service should be allowed to conduct small dollar lending in order to respond to the needs of consumers who don't have access to a local bank branch.

One commenter encouraged the agencies to make all agency forms available electronically and to allow banks to submit forms electronically.

One bank suggested that the agencies provide additional clarification on how the risk-assessment process is conducted prior to examination and on how bank policies should be construed.

One banker recommended that the Ombudsman's office be expanded to include bankers instead of just examiners.

One law professor and one community group suggested that regulators should evaluate whether banks have sufficient products available and accessible to people with unconventional profiles or prior banking issues.

Two commenters recommended that regulators consider ways to make it easy for all bank customers, including non-English speakers, to file comments on specific banks and their policies.

One bank noted that loan servicing charges are driving up the cost of servicing all loans.

One commenter suggested that the threshold for systemic importance should be at least $100 billion.

Two commenters asserted that the number of disclosures given to consumers should be reduced. The commenters stated that the volume of disclosures provided to consumers for a home loan was too large and resulted in consumers not reading the information provided. Both commenters stated that disclosures were difficult for consumers to comprehend. One commenter agreed with disclosing information to consumers, but suggested that the disclosures be simplified so that consumers can understand the information provided.

Appendices

Appendix 1: State Liaison Committee Letter

February 27th, 2017

The Honorable Daniel Tarullo
Governor, Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman, FDIC
Washington, DC

The Honorable Thomas J. Curry
Comptroller, OCC
Washington, DC

Dear Governor Tarullo, Chairman Gruenberg and Comptroller Curry:

As the Federal Financial Institutions Examination Council (FFIEC) prepares to finalize the second Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) [1] review and deliver a report to Congress detailing efforts made by the Federal banking agencies (the agencies), the State Liaison Committee [2] (SLC) offers its perspective on certain issues raised through the process. The SLC would like to underscore its priorities with respect to the matters at hand and offer suggestions to further EGRPRA efforts made by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC).[3]

The SLC serves as a conduit through which state regulators can share their regulatory and supervisory perspectives with its fellow FFIEC members. As the chartering and supervisory authorities for over 75% of the banks in the United States, state regulators are charged with protecting consumers, ensuring safety and soundness, and encouraging economic prosperity in their states. State bank regulators, represented by the SLC, charter approximately 4,713 banks with $5.3 trillion assets under supervision, and license and supervise over 177,000 mortgage companies, branches and individual mortgage loan originators. In addition to commercial banks and mortgage entities, state regulators supervise credit unions, savings banks, savings and loan associations, bankers' banks, credit card banks, industrial loan companies, and non-depository trust companies.

SLC members and other state bank supervisors participated in several EGRPRA Outreach meetings held during 2014 and 2015. Based on these discussions and conversations with industry and regulator stakeholders, state regulators have identified opportunities to fulfill EGRPRA's stated goals, without compromising safety and soundness or consumer protections, including:

1. The simplification of capital rules for smaller and less-complex institutions;
2. A continuation and expansion of Call Report burden reduction efforts;
3. A reexamination of regulatory appraisal thresholds for federally related transactions; and
4. A reevaluation of the use of the Herfindahl-Hirschman Index in determining market concentration.

I. Capital Rule Simplification

State banking regulators strongly support requiring sufficient, quality capital. However, the costs associated with the complexity of the current rules disproportionately impact smaller institutions, and potentially inhibit community banks from serving the credit needs of their markets. We urge the agencies to hasten efforts to devise a more practical approach to regulatory capital for small, non-complex banks. In both written and in-person comments at the EGRPRA Outreach meetings, small bank stakeholders and industry representatives raised concerns regarding how various aspects of the revised capital rules—such as high volatility commercial real estate and the treatment of mortgage servicing assets– are affecting small bank operations. In addition to specific concerns, commenters expressed that the general complexity of the rules requires institutions to redirect resources that could otherwise be employed to serve the financial needs of their communities. SLC members recognize that simplifying the capital rules will be a significant undertaking, and are prepared to support the agencies' efforts to tailor capital requirements commensurate with smaller and less complex institutions.

II. Call Report Burden Reduction

Regulators agree that the complexity of the capital rules complicate Call Report preparation, and recognize that simplifying the capital standards will meaningfully reduce the burden associated with reporting Schedule RC-R (Regulatory Capital). As it stands, significant resources are required to interpret lengthy, complicated instructions and gather data necessary to complete the Schedule. In addition to the capital schedule, further simplification of the Call Report is necessary to reduce burden on smaller and less complex banks.

SLC members participated in and acknowledge the deliberate efforts of the FFIEC members that resulted in the creation of the new Consolidated Reports of Condition and Income for Eligible Small Institutions (FFIEC 051). A more streamlined Call Report was a requisite first step; however, industry reaction indicates that this work needs to accelerate and broaden in scope. Small and less complex institutions continue to comment on the time-consuming effort and cost associated with completing several Schedules, as well as line items that require a high degree of manual intervention. Even after the burden reduction process that resulted in FFIEC 051, the aforementioned capital Schedule RC-R remains fourteen pages long and comprises a significant portion of the full Call Report.

To further reduce Call Report-related burden on small and less complex banks, we look forward to working with our fellow FFIEC members to expand eligibility criteria for FFIEC 051. Currently, domestically-based institutions with assets less than $1 billion will be eligible to file FFIEC 051. We recommend consideration of an indexed, multi-factor set of criteria such as the FDIC's Community Bank Research definition from its 2012 Community Banking Study.[4] In addition to the adoption of a broader eligibility threshold for FFIEC 051, we look forward to participating in further Call Report improvement efforts while striving to ensure that simplification does not unduly compromise the ability of regulators to monitor financial performance and risk.

III. Appraisals for Federally Related Transactions

The SLC members find the appraisal regulation thresholds, established by the agencies to implement the Financial Institutions Reform Recovery and Enforcement Act (FIRREA) [5] to be outdated and are concerned they may unnecessarily impede credit availability, particularly in rural and underserved urban markets. The current threshold of $250,000 for both residential and nonresidential (commercial) real estate transactions has not been adjusted since 1994.[6] Real estate loans over the dollar threshold must be supported by an appraisal performed by a licensed or certified appraiser, while loans below the threshold may have the market value of the property determined by an evaluation [7] that conforms to published regulatory guidelines.[8] In many instances, the costs associated with an appraisal on a relatively small real estate loan are high in comparison to the property's purchase price.

Further, the lack or limited number of qualified appraisers in numerous markets throughout the country can lead to even higher appraisal costs and delays in the real estate transaction process. Costs, appraiser shortages, outdated thresholds, as well as the inflexible nature of the appraisal thresholds, impact credit availability. These issues, singly or in combination, can hamper real estate lending activity. The SLC also notes that while real estate transactions in rural areas may comprise a low volume of the total transactions nationwide, each rural transaction can have significant impact on the local community.

State regulators support updating the dollar thresholds for federally related transactions requiring an appraisal to reflect inflation. We also suggest indexing the thresholds to account for changes in real estate value over time. SLC members believe

[1] *See* 12 U.S.C. 3311. The stated goal of the statute is to identify outdated, unnecessary, or unduly burdensome regulations, and consider how to reduce regulatory burden on insured depository institutions while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system.

[2] Pursuant to 12 U.S.C. 3306, the SLC is comprised of five representatives of State agencies that supervise financial institutions, including the SLC Chair who is a voting member of the Council.

[3] The SLC commends the NCUA for its voluntary participation in the EGRPRA process. As the NCUA is not statutorily mandated by the EGRPRA, this letter only addresses the federal banking agencies within the framework of the FFIEC. State regulators filed comments directly with the NCUA, pursuant to the public request for comment throughout the NCUA's voluntary EGRPRA review.

[4] *See https://www.fdic.gov/regulations/resources/cbi/report/CBSI-1.pdf.* The FDIC Community Banking Study (December 2012) defines an institution with assets over $1 billion as a community bank if loans to assets are greater than 33%, core deposits to assets are greater than 50%, it operates more than one office but no more than the indexed maximum number of offices, it serves equal to or less than two large MSAs with offices, it serves equal to or less than three states with offices, and no single office has more deposits than the indexed maximum branch deposit size.

[5] *See* 12 CFR 34.43.

[6] *See* 12 CFR 323.3(a)(1).

[7] *See* 12 CFR 323.3 (b). An evaluation provides an estimate of the property's market value but does not have to be performed by a state licensed or certified appraiser.

[8] *See https://www.fdic.gov/news/news/financial/2010/fil10082a.pdf* and *https://www.fdic.gov/news/news/financial/2010/fil10082a.pdf.* Regulatory expectations for evaluations are detailed within the December 10, 2010 Interagency Appraisal and Evaluation Guidelines, and the March 4, 2016 Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions.

a reasonable increase in the threshold level does not present an undue threat to the safety and soundness of institutions, and that real estate evaluations conforming with regulatory guidance provide reasonable support for market values as well as protection for consumers. Evaluations also offer cost control for both financial institutions and borrowers.

The SLC recognizes that FIRREA requires Consumer Financial Protection Bureau (CFPB) concurrence that the threshold level provides reasonable protection for consumers purchasing 1–4 unit single-family residences.[9] We also acknowledge that the appraisal requirements of the Government-Sponsored Enterprises (GSEs) are unaffected by the dollar thresholds set by the agencies. However, action by the agencies to update the residential real estate threshold would provide flexibility for institutions to make and retain a greater number of such loans, which would still be subject to the agencies' criteria for evaluations as well as safety and soundness examination by bank regulatory authorities.

In addition to raising the appraisal dollar thresholds, we suggest the agencies consider a transaction-based, de-minimis test for real estate loans. A de-minimis test presents a simple option for relief that would significantly reduce regulatory burden for banks that retain a limited number of real estate loans exempt from the appraisal requirements. SLC members urge the agencies to consider the effective, simple, and lasting solutions discussed above.

Agencies' Options for Relief

The agencies have offered a solution to the appraiser shortage whereby requests may be made to the Appraisal Subcommittee[10] for temporary waivers of any requirement relating to certification or licensing of a person to perform appraisals.[11] This would not waive the appraisal requirement for real estate transactions above the thresholds, but suspend the requirement that appraisals be performed by certified or licensed individuals. SLC members question the feasibility of this option. Instituting waiver proceedings to address widespread appraiser shortages is untested. The related regulatory process is not expedient, and provisions for waiver termination are required. It is unclear whether this option creates a third category of estimating the market value of real property: a USPAP-conforming appraisal performed by individuals otherwise unauthorized to do so.

In addition to the waiver option, the agencies also emphasize that state appraiser certifying and licensing agencies may temporarily recognize the credentials of an appraiser issued by another state under certain conditions.[12] This transfer of certifications across state lines is outside the authority of the agencies, presents limited potential relief, and assumes the incoming appraiser has sufficient familiarity with the market to make a reasonable determination of value. Based on the experience of state regulators, the greatest factor impacting the reliability of real estate market value estimates—whether in the form of an appraisal or an evaluation—is the preparer's familiarity with the specific market.

After considering both options, the SLC has concluded neither is likely to materially improve the state of appraiser availability in affected markets. Both are temporary, unclear, and do not address the persistent nature of the issue. The associated cost to borrowers is also unknown.

IV. Herfindahl-Hirschman Index

The SLC recommends a reevaluation of how the Herfindahl-Hirschman Index (HHI) is used when considering the effects on market competition of proposed mergers. This topic was heavily discussed at the Federal Reserve Bank of Kansas City EGRPRA Outreach meeting. The HHI serves as the principle measure of market concentration, and its efficacy is highly dependent upon both the definition of the market(s) and the products or services considered in determining market share. The agencies focus on branch networks and deposit shares of depository institutions in a local banking market. Unless specified on a case-by-case basis, non-depositories' market influence is not factored into HHI calculations, and credit union deposits must fulfill specific conditions to be included, albeit often at a lower weight.[13] SLC members recognize that due to the reliance on deposits and the discounting of credit unions' deposit influence on the market, the resultant HHI calculation does not offer a representative assessment of market concentration. Consequently, as currently employed, use of the HHI may impede in-market merger and acquisition activity in markets populated by small institutions.

The HHI's reliance on deposit market-share to determine market concentration is problematic, as non-depositories with substantial market influence are not considered. There are numerous examples of institutions that, despite engaging in a considerable degree of activity, are not accounted for. Because of its reliance on deposits as a proxy for activity, the HHI does not consider the market share of a wide breadth of financial firms, including: specialty lenders in mortgages and credit cards, commercial lending finance companies, accounts receivable finance companies, and money market mutual funds for deposits. SLC members have found that, without consideration of the market influence of non-depository financial firms, the HHI cannot provide a realistic representation of market concentration.

For example, in many rural markets, Farm Credit Associations (FCAs) hold nearly as much agricultural loan market-share as their insured depository counterparts, but are not considered in HHI calculations. Researchers at the Federal Reserve Bank of Kansas City[14] found that, in assessments of market concentration in rural areas, non-depository FCA market influence was not considered because of a lack of deposits. Hypothetical inclusion of FCA market influence in HHI calculations indicates a lower degree of market concentration. Researchers also found that when measures of market concentration include FCAs, in-market mergers are less likely to be halted because of competitive concerns. This example illustrates that the HHI's dependence on deposits as the measure of market influence not only provides a limited view of the market, but that this practice has a demonstrable effect on in-market merger and acquisition activity.

The SLC recommends that, if deposits remain the primary data used to construct market shares, credit union deposits be weighted commensurate with their market influence. Generally, if a credit union is included in HHI calculations, its deposits are applied a weight of 50%, which suggests their competitive influence in the deposit market is half that of another institution. SLC members find that the general weight applied to credit union deposits underestimates their market influence.

The HHI's reliance on deposits as a proxy for market share could inhibit small firms from engaging in in-market merger and acquisition activity. Furthermore, this disadvantages in-market mergers of peer institutions and could result in the entry of a large, deposit-gathering branch of a nationwide institution. In-market acquisitions better serve consumer preference, as the majority would rather hold deposits at a community bank.[15] The SLC recommends that the agencies reconsider the HHI's reliance on deposits and the weight applied to credit union deposits, as it may place smaller institutions at a disadvantage.

We appreciate the efforts made by the Federal banking agencies over the two-year EGRPRA process. State regulators agree there is much to be done to better tailor the current regulatory environment to the diversity of the financial services industry. In the spirit of fulfilling the goals of the Economic Growth and Paperwork Reduction Act, SLC members

[9] *See* 12 U.S.C 3341(b).

[10] The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) was created on August 9, 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI). Title XI's purpose is to ''provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.''

[11] *See* 12 CFR part 1102.

[12] *See* 12 U.S.C. 3351(a).

[13] *See* here. Credit unions are typically included in these calculations if two conditions are met: (1) the field of membership includes all, or almost all, of the market population, and (2) the credit union's branches are easily accessible to the general public. In such instances, a credit union's deposits will generally be given 50% weight. Commercial bank deposits are weighted at 100%, and deposits of thrifts are weighted at 50%. Thrifts may receive 100% weight under certain conditions.

[14] *See* here. The Farm Credit System makes loans to their member borrowers through 76 Farm Credit Associations. Farm Credit Associations originated about 40% of agricultural loans in 2014.

[15] *See* here. According to the 2015 Consumer Banking Insights Study, if everything were equal, 66% of U.S. adults would rather bank at a community bank or credit union than a larger competitor.

offer these straightforward and practical recommendations to address certain persistent regulatory challenges. We look forward to continued discussion and coordination with the agencies and our other fellow FFIEC members.

Sincerely,

[Karen K. Lawson, signed]

Karen K. Lawson, Chair

State Liaison Committee

Appendix 2: Economic Growth and Regulatory Paperwork Reduction Act of 1996

12 U.S.C. § 3311

United States Code Annotated

Title 12. Banks and Banking

Chapter 34. Federal Financial Institutions Examination Council

Section 3311. Required review of regulations

(a) In general

Not less frequently than once every 10 years, the Council and each appropriate federal banking agency represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such appropriate federal banking agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

(b) Process

In conducting the review under subsection (a) of this section, the Council or the appropriate federal banking agency shall—

(1) categorize the regulations described in subsection (a) of this section by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council, or the appropriate federal banking agency); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) Complete review

The Council or the appropriate federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) of this section is conducted with respect to all regulations described in subsection (a) of this section not less frequently than once every 10 years.

(d) Regulatory response

The Council or the appropriate federal banking agency shall—

(1) publish in the **Federal Register** a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) Report to Congress

Not later than 30 days after carrying out subsection (d)(1) of this section, the Council shall submit to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

CREDIT(S)

(Pub. L. No. 104-208, Div. A, Title II, Section 2222, September 30, 1996, 110 Stat. 3009-414.)

Appendix 3: Notices Requesting Public EGRPRA Comment on Agency Rules (four)

1. 79 FR 32172 (June 4, 2014) [1]

Notice of regulatory review; request for comments.

[1] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12741.pdf.*

2. 80 FR 7980 (February 13, 2015) [2]

Notice for regulatory review; request for comments.

3. 80 FR 32046 (June 5, 2015) [3]

Notice for regulatory review, request for comments.

4. 80 FR 79724 (December 23, 2015) [4]

Notice for regulatory review, request for comments.

Appendix 4: Notices Announcing EGRPRA Outreach Meetings (six)

(1) 79 FR 70474 (November 26 2014) [1]

Notice of outreach meeting, Los Angeles, CA.

(2) 80 FR 2061 (January 15, 2015) [2]

Notice of outreach meeting, Dallas, TX.

(3) 80 FR 20173 (April 15, 2015) [3]

Notice of outreach meeting, Boston, MA.

(4) 80 FR 39390 (July 9, 2015) [4]

Notice of outreach meeting, Kansas, MO.

(5) 80 FR 60075 (October 5, 2015) [5]

Notice of outreach meeting, Chicago, IL.

(6) 80 FR 74718 (November 30, 2015) [6]

Notice of outreach meeting, Washington, DC.

BILLING CODE 4810–33–P

[2] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf.*

[3] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13749.pdf.*

[4] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32312.pdf.*

[1] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-11-26/pdf/2014-27969.pdf.*

[2] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-01-15/pdf/2015-00516.pdf.*

[3] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-04-15/pdf/2015-08619.pdf.*

[4] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-07-09/pdf/2015-16760.pdf.*

[5] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-10-05/pdf/2015-25258.pdf.*

[6] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-30247.pdf.*

Appendix 5: FinCEN Response to EGRPRA Comments

UNITED STATES DEPARTMENT OF THE TREASURY
FinCEN
FINANCIAL CRIMES ENFORCEMENT NETWORK

December 9, 2016

Governor Daniel K. Tarullo
Board of Governors of the Federal Reserve
Martin Building, Room 3378
Twentieth and C Streets, Northwest
Washington, D.C. 20551

Chairman Martin J. Gruenberg
Federal Deposit Insurance Corporation
550 Seventeenth Street, Northwest
Washington, D.C. 20429

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Dear Governor Tarullo, Chairman Gruenberg and Comptroller Curry:

The Financial Crimes Enforcement Network (FinCEN) has reviewed a subset of the comments submitted to you pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)[1] that relate to the Bank Secrecy Act (BSA), as well as a summary of the comments your agencies provided to the U.S. Department of the Treasury. EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC) and its member Federal Banking Agencies (FBAs)[2] to review at least once every ten years the regulations they prescribe.

Although EGRPRA does not cover the BSA itself,[3] it does cover those BSA obligations

[1] 21 U.S.C. § 3311

[2] Member FBAs include the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Board of Governors of the Federal Reserve System. The National Credit Union Administration is conducting a separate review of its regulations for the EGRPRA.

[3] The BSA is codified primarily in 31 U.S.C. §§ 5311-5314, 5316-5332. Title 12 contains certain Treasury BSA authorities, including recordkeeping requirements for funds transfers and requirements for uninsured banks codified at 12 U.S.C. §§ 1829b and 1951-1959. FinCEN issues implementing regulations, which appear at 31 C.F.R.

under the FBAs' supervisory authority that are incorporated into Title 12.[4] As part of the EGRPRA process, the FBAs may, therefore, collect comments regarding the potential burden on the private sector resulting from certain BSA requirements imposed by the FBAs under Title 12, as well as their related supervisory process under Title 31. Although FinCEN is not required to consider such comments, FinCEN finds the information helpful when assessing whether to revise, eliminate, or add BSA requirements under Title 31.

We look forward to continue working with your agencies to review BSA-related comments pursuant to EGRPRA, particularly through the Bank Secrecy Act Advisory Group (BSAAG), where many of these issues have been, or are being, considered.[5] The BSAAG, which FinCEN chairs, consists of representatives from state and federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to BSA requirements. Given the range of representatives from the appropriate constituencies, we believe the BSAAG is an appropriate and productive forum for considering the EGRPRA comments. Our respective staffs also regularly discuss these and other issues, including through the FFIEC BSA/Anti-Money Laundering Working Group monthly meetings. I look forward to further discussion and collaboration among our respective agencies on these issues in the coming year.

In reviewing the BSA-related EGRPRA comments, FinCEN considered the comments that relate to suspicious activity reports (SARs), currency transaction reports (CTRs), information sharing, and examination procedures. With respect to CTRs and SARs, several comments suggest reviewing CTR and SAR thresholds. Specifically, they propose discussing with law enforcement officials whether current thresholds are appropriate and whether law enforcement receives the information they need to accomplish their objectives. CTRs and SARs are a critical component of FinCEN's efforts to safeguard the financial system from illicit use, to combat money laundering and to promote national security. FinCEN uses this information for its own analysis and to support law enforcement investigations. FinCEN has discussed the threshold issue with law enforcement and other relevant stakeholders in the BSAAG meetings, and participating law enforcement officials affirmed that the current SAR and CTR thresholds are appropriate and should not be raised. Officials emphasized that the information they receive through these reports (at existing thresholds) is invaluable to law enforcement efforts. In illustrating law enforcement use of FinCEN's data, keep in mind that 10,000 law enforcement and regulatory users make over 30,000 searches of the BSA data every day.

Chapter X.

[4] For example, 12 U.S.C. 1818(s) requires FBAs to impose anti-money laundering program requirements and to examine banks for compliance with the BSA.

[5] The Annunzio-Wylie Anti-Money Laundering Act of 1992 (the Act) requires the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group on Reporting Requirements (the Advisory Group) consisting of representatives of the Departments of the Treasury and Justice, the Office of National Drug Control Policy, and other interested persons, financial institutions, and trades and businesses subject to the reporting requirements of the Currency and Foreign Transactions Reporting Act (known as the Bank Secrecy Act) or Section 60501 of the Internal Revenue Code of 1986.

FinCEN continues to highlight the benefits of BSA data - which FinCEN receives primarily through CTRs and SARs - to support criminal investigations and prosecutions, including through its Law Enforcements Awards program.[6] In addition to providing law enforcement with direct access to BSA data, FinCEN uses BSA data to analyze and disseminate financial intelligence to Treasury colleagues and law enforcement and intelligence community partners. FinCEN has made effective use of BSA data at existing thresholds for both money laundering and terrorist financing purposes. Accordingly, we do not anticipate revising the CTR or SAR thresholds in the immediate future based on current information. FinCEN will, however, continue to consider periodically the appropriateness of these thresholds.

Through the BSAAG, FinCEN is discussing potential changes to the CTR requirements that could ease reporting burdens, without harming the value of these reports to law enforcement. The EGRPRA comments and BSAAG discussions highlight two related key CTR issues: aggregating transactions to determine if a CTR needs to be filed and the process for exempting vetted cash-intensive businesses to reduce CTR filing burdens.

Financial institutions indicated that the CTR aggregation issue should be prioritized for further discussion at the BSAAG. We are continuing to review the CTR aggregation process, including ways in which the reporting process could be expedited or simplified. Following these discussions, FinCEN can address the process for certain CTR exemptions. We encourage staff from each of your agencies to continue participating as an integral part of these ongoing discussions.

Treasury has already addressed the EGRPRA comments that relate to enhancing existing safe harbor provisions to protect financial institutions from liability associated with information sharing. Specifically, industry suggested: i) modifying the existing BSA safe harbor provisions to ensure financial institutions can file SARs without incurring civil liability; and ii) amending Section 314(b) of the USA PATRIOT Act to allow financial institutions to share information about any activity that may be reported under 31 U.S.C § 5318(g) or other statutes, not just suspicious activity related to money laundering or terrorist financing, to ensure that institutions can share information relating to any possible violation of law or regulation. Following interagency discussions and agreement that included your agencies, Treasury provided language to Congress to amend the current safe harbor provisions accordingly. If Congress enacts these changes, FinCEN will work expeditiously to amend related implementing regulations.

Finally, FinCEN is considering through the BSAAG the EGRPRA comments that involve the supervisory process and expectations related to BSA examinations of financial institutions. FinCEN will continue to discuss these issues in the BSAAG

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[6] *FinCEN Awards Recognize Partnership Between Law Enforcement and Financial Institutions to Fight Financial Crime,* https://www.fincen.gov/news/news-releases/fincen-awards-recognize-partnership-between-law-enforcement-and-financial.

working group that is charged with evaluating the difference or delta between BSA reporting requirements and supervisory expectations. As FinCEN has delegated its examination authority to your agencies, we request that your respective staff participate in these discussions to review examination expectations and procedures with FinCen, with implementing the BSA and its related regulations for which FinCen is charged with administering.

I appreciate your seeking FinCen's input and response to BSA-related comments received through the EGRPRA process. We look forward to continuing our collaborative efforts to enhance and improve BSA requirements as well as examination procedures relating to BSA compliance.

Sincerely,

[Jamal El-Hindi, signed]
Jamal El-Hindi
Acting Director

cc: Under Secretary Adam Szubin

BILLING CODE 4810–33–C

II. NCUA Report

ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT

NATIONAL CREDIT UNION ADMINISTRATION BOARD

REPORT TO CONGRESS

Introductory statement by National Credit Union Administration Acting Chairman J. Mark McWatters

I. Executive Summary
II. Overview of NCUA Participation
III. Summary of Comments Received
IV. Significant Issues; Agency Response
V. Other Agency Initiatives
VI. Legislative Recommendations
VII. Conclusion
VIII. Appendices
- Chart of Agency Regulations
- Notices Requesting Public EGRPRA Comment on Agency Rules
- Regulatory Relief Initiative

Introductory Statement by National Credit Union Administration Acting Chairman

J. Mark McWatters

The EGRPRA review process designed by Congress provides a useful framework for the NCUA Board to assess the impact of its rules on the operations of federally insured credit unions and their communities, a process that as acting chairman of the agency I have welcomed.

While the NCUA is first and foremost a prudential regulator for credit unions and the manager of the National Credit Union Share Insurance Fund (NCUSIF), the Board recognizes the significant regulatory burdens credit unions face. If we can minimize those burdens without jeopardizing safety and soundness or ignoring congressional directives, it is reasonable for us to do so.

For public policy reasons, the NCUA Board has chosen to participate in the regulatory review process provided by EGRPRA, although our regulatory review includes other agency initiatives to assess credit union compliance costs and benefits. The EGRPRA review process enhances the agency's comprehensive annual review of one-third of its regulations. It also facilitates the NCUA's overall regulatory approach, which is to implement statutory requirements through regulations, guidance, policies, and practices that accomplish the goals of Congress in an efficient and effective manner, imposing the minimum burden necessary to promote the safety and soundness of credit unions and their members' deposits. As set out more fully in this report, the EGRPRA review process has led to several important improvements and modifications to the NCUA's regulations.

The NCUA Board is committed to providing effective, targeted regulation and appropriate supervision while containing requirements that impede innovation at our nation's credit unions. The NCUA Board continues to look for ways to strengthen its capabilities to identify emerging concerns in a timely way even as we review our rules to help limit credit union compliance burdens. More and more rules not only curtail credit unions and their members, but also impose growing costs and resource allocation dilemmas on the NCUA.

Consistent with the goals of EGRPRA, the NCUA Board looks forward to continuing our efforts to fulfill congressional mandates while affording well managed credit unions important flexibility and discretion, consistent with safety and soundness, in order to help them meet the changing financial needs of their members now and into the future.

Without limitation, we intend to substantially revise the risk-based net worth rule; permit credit unions to issue supplemental capital for risk-based net worth purposes; revise and finalize the proposed field of membership and securitization rules; and modernize the central liquidity facility, stress-testing, and corporate credit union rules, among others; all in strict compliance with the Federal Credit Union Act and other applicable law. We will also work with Congress to update the FCUA to facilitate credit union operations and growth so as to ensure the safety and soundness of the NCUSIF.

[J. Mark McWatters, signed]

J. Mark McWatters

Acting Chairman

I. Executive Summary

Congress enacted EGRPRA as part of an effort to minimize unnecessary government regulation of financial institutions consistent with safety and soundness, consumer protection, and other public policy goals.[1] Under EGRPRA, the appropriate federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation; herein agencies[2]) and the Federal Financial Institutions Examination Council must review their regulations to identify outdated, unnecessary, or unduly burdensome requirements imposed on insured depository institutions. The agencies are required, jointly or individually, to categorize regulations by type, such as ''consumer regulations'' or ''safety-and-soundness'' regulations. Once the categories have been established, the agencies must provide notice and ask for public comment on one or more of these regulatory categories.

NCUA is sympathetic to the need for regulatory compliance burden reduction on behalf of the credit unions we regulate. At

[1] EGRPRA, Public Law 104–208, Div. A, Title II, section 2222, 110 Stat. 3009 (1996); codified at 12 U.S.C. 3311.

[2] The Office of Thrift Supervision was still in existence at the time EGRPRA was enacted and was included in the listing of agencies. Since that time, the OTS has been eliminated and its responsibilities have passed to the agencies and the Consumer Financial Protection Bureau.

the same time, the agency is cognizant and respectful of its responsibility as a safety-and-soundness regulator. The financial crisis of 2008 and the Great Recession that ensued thereafter underscored the need for effective, prudential regulation within the U.S. financial sector. As is documented throughout this report, the agency is guided by the need to strike a balance between these competing considerations. The agency has worked diligently within the EGRPRA process to identify needed regulatory changes and then take quick action, where possible, to adopt those reforms. We also have identified several statutory issues that Congress may want to consider acting on to provide credit unions with more regulatory relief going forward.

NCUA looks forward to continuing its approach as a responsive regulator, continually re-examining and re-considering its rules and regulations to assure that compliance burden remains within reasonable limits, with significant flexibility and discretion afforded well managed credit unions consistent with safe and sound operations.

Since 1987, NCUA has followed a well-delineated and deliberate process to continually review its regulations and seek comment from stakeholders, such as credit unions and their representatives. Through this agency-initiated process, NCUA conducts a rolling review of one-third of its regulations each year—we review all of our regulations at least once every three years.

This long-standing regulatory review policy helps to ensure NCUA's regulations:

- accomplish what Congress intended;
- minimize compliance burdens on credit unions, their members, and the public;
- are appropriate for the size and risk profile of the credit unions regulated by NCUA;
- are issued only after public participation in the rulemaking process, consistent with the Administrative Procedure Act; and
- are clear and understandable.

This rolling review is intended to be transparent for stakeholders. NCUA publishes on our website a list of the applicable regulations under review each year and invites public comment on any or all of the regulations.

II. Overview of NCUA Participation

NCUA is not required to participate in the EGRPRA review process, because NCUA is not defined as an ''appropriate Federal banking agency'' under EGRPRA.[3] Nonetheless, the current board embraces the objectives of EGRPRA and in keeping with the spirit of the law, the Board has participated in the review process. (The NCUA also participated in the first EGRPRA review, which ended in 2006).

The categories used by NCUA to identify and address issues are:

- Agency Programs;
- Applications and Reporting;
- Capital;
- Consumer Protection;
- Corporate Credit Unions;
- Directors, Officers, and Employees;
- Money Laundering;
- Powers and Activities;
- Rules of Procedure; and
- Safety and Soundness.

These categories are comparable, but not identical, to the categories developed jointly by the banking agencies covered by EGRPRA but they reflect some of the fundamental differences between credit unions and banks. For example, 'corporate credit unions' is a category unique to NCUA's chart. For the same reason, NCUA decided to publish its notices separately from the joint notices used by the banking agencies, although all of the notices were each published at around the same time. NCUA included in its EGRPRA review all rules over which NCUA has drafting authority, except for certain rules that pertain exclusively to internal operational or organizational matters at the agency, such as NCUA's Freedom of Information Act rule.

Copies of the four notices the NCUA published in the **Federal Register** in connection with the EGRPRA process are attached as an appendix to this report.[4]

NCUA did not elect to participate in the outreach sessions sponsored by the agencies, because the sessions were targeted directly to banks, and understandably, much of the discussion focused on issues of principal applicability to banks. NCUA routinely conducts town-hall meetings, listening sessions, and other outreach activities, during which views from stakeholders are solicited and discussed. In addition to providing information on agency proposals, rules, personnel contact information and board members' travel schedules, since 1987 NCUA has invited public comment on one-third of its existing rules each year.[5] The result is a review of the agency's rules completed within rolling three-year cycles. Comments received during this rolling one-third review are blended in with and considered as applicable along with comments submitted in response to the EGRPRA notices.

NCUA is also mindful that credit unions are subject to certain rules issued or administered by other regulatory agencies, such as the Consumer Financial Protection Bureau (CFPB) and the Department of the Treasury's Financial Crimes Enforcement Network. Because we have no independent authority and limited ability to change such rules, our notices—as do the joint notices prepared by the other agencies—advise that comments submitted to us but focused on a rule administered by another agency will be forwarded to that other agency for appropriate consideration.

III. Summary of Comments Received Under the NCUA EGRPRA Review

1. Applications and Reporting

Field of Membership and Chartering

Two commenters addressed this topic;[6] each of whom suggested that NCUA expand its definition of ''rural district'' and provide greater flexibility to federal credit unions seeking to add a rural district to their field of membership. Two commenters also requested that NCUA eliminate or modify quality assurance reviews for associational common bond, including extending the ''once a member always a member'' principle into this area. One commenter proposed that NCUA simplify procedures for conversion from one type of charter to another and allow federal credit unions converting to community charter to continue serving their pre-existing field of membership, including new members. One commenter proposed that NCUA should allow a credit union converting to a federal charter to accept new members from associational groups that had been served prior to the conversion. One commenter requested that NCUA simplify the process for adding underserved areas, and another commenter proposed that NCUA should add to the list of associations for which automatic approval is available. This commenter also proposed that NCUA eliminate the threshold determination concerning membership eligibility for certain associational groups. As discussed more thoroughly later in this report, the Board did propose and adopt several significant changes in this area in 2016.

Fees Paid by Federal Credit Unions

One commenter addressed this topic and suggested that NCUA provide clearer disclosure to credit unions as to how fees paid to the agency are managed.[7] The commenter requested that NCUA provide non-aggregated components of the expenditures from the several funds NCUA manages, such as how monies from the National Credit Union Share Insurance Fund are allocated to the NCUA budget.

Applications for Insurance

One commenter addressed this matter,[8] focusing on provisions governing interest rate risk pursuant to 12 CFR 741.3. Specifically, the commenter asked that the rules in this particular area be clarified and simplified.

Financial, Statistical, and Other Reports

One commenter wrote on these provisions.[9] The commenter suggested that NCUA conduct a comprehensive review and evaluation of the current Call Report protocol, with a view toward making the 5300 Call Report more in line with the Federal Financial Institutions Examination

[3] See 12 U.S.C. 1813(q).

[4] Dates of publication were as follows: June 4, 2014, (79 FR 32,191); December 19, 2014, (79 FR 75,763); June 24, 2015, (80 FR 36,252); and December 23, 2015, (80 FR 79,953).

[5] Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35,231 (September 8, 1987), as amended by IRPS 03-2, 68 FR 32,127 (May 29, 2003).

[6] Applications and reporting—79 FR 32,191 (June 4, 2014); Field of membership and chartering—12 CFR 701.1; IRPS 03–1.

[7] Fees paid by federal credit unions, 12 CFR 701.6.

[8] Applications for insurance, 12 CFR 741.0, 741.3, and 741.4.

[9] Financial, statistical, and other reports, 12 CFR 741.6.

Council model. The agency is considering ways to streamline the call report.

Purchase of Assets and Assumption of Liabilities

One commenter addressed this provision and recommended that NCUA ease restrictions on the purchase of assets and assumption of liabilities by federally insured, state-chartered credit unions from federally insured, non-credit union depository institutions.[10] Specifically, the commenter proposed that NCUA change its rule to simply require notice to, rather than approval by, NCUA's regional offices for purchase and assumption transactions undertaken by federally insured, state-chartered credit unions. As an alternative suggestion, the commenter advocated including in the rule a 30-day deadline for action by the regional office on requests for approval.

Conversion of Insured Credit Union to Mutual Savings Bank

Two commenters addressed this provision.[11] Both commenters urged NCUA to clarify and streamline the process under which conversions are approved. One commenter also proposed that NCUA should support legislative changes to enable a state-chartering authority, rather than NCUA, to review and approve requests by federally insured, state-chartered credit unions to convert to another form of federally insured depository institution.

Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

Three stakeholders commented on this process.[12] One commenter criticized NCUA by noting that the agency has been too selective in designating which credit unions may be merger partners for distressed credit unions. Another requested that NCUA provide more comprehensive and up-to-date guidance on how to execute and complete a merger, focusing on operational concerns; in doing so, the commenter suggested, NCUA should solicit and obtain input from stakeholders. Another suggested that NCUA should clarify which aspects of the merger and conversion rules apply to federally insured, state-chartered credit unions.

2. Powers and Activities

a. Lending, Leasing, and Borrowing

Loans to Members and Lines of Credit to Members

Two commenters addressed this rule.[13] One proposed that NCUA liberalize its policy about rental of real estate-owned properties and mandatory marketing efforts. The other commenter suggested that NCUA remove a requirement that state laws governing prohibited fees and non-preferential loans be ''substantially equivalent'' before federally insured, state-chartered credit unions are exempted from NCUA's rule. The commenter proposed that NCUA should replace this with the standard of minimizing risk.

Loan Participations

One commenter addressed this section. The commenter suggested that NCUA should exempt federally insured, state-chartered credit unions from 12 CFR 701.22 where state law provides for adequate safety-and-soundness controls. Alternatively, the commenter proposed, NCUA should streamline the rule by focusing on safety-and-soundness considerations and removing intricately detailed regulatory requirements.

Share, Share Draft, and Share Certificate Accounts

One commenter addressed this rule and proposed that NCUA should allow for pass-through insurance coverage on shares comprising lawyers' trust accounts, involving client funds held in trust by attorneys (subsequent to this comment, Congress amended the Federal Credit Union Act to specifically allow for this).[14] The commenter also proposed that NCUA should provide pass-through coverage for prepaid debit card accounts established to accept government benefits through a pooled automatic clearinghouse arrangement.

Member Business Loans

Four commenters addressed this provision.[15] It should be noted that NCUA conducted a comprehensive review of this rule in 2015, with final changes adopted in February 2016, subsequent to the receipt of these comments. Many of the issues identified by the commenters were considered and addressed during this revision process.

One commenter proposed that NCUA should:

• eliminate all regulatory requirements for member business loans not specifically required by statute;

• re-interpret the agency's posture on the exception for credit unions with a history of primarily making member business loans; and

• liberalize guidance in Letter to Credit Unions 13-CU-02 concerning waiver options.[16]

Another commenter proposed that NCUA should:

• broaden agency interpretation of federal credit unions with a history of primarily making member business loans;

• simplify and make more flexible the procedures for obtaining individual and blanket waivers; and

• support statutory changes that would liberalize the current member business loan restrictions.

A third commenter proposed that NCUA should:

• support legislative change to raise the 12.25 percent of assets limit on aggregate member business loans;

• raise the small loan exception from the member business loan definition to $100,000;

• distinguish between underwriting considerations and the statutory limit in the member business loan definition;

• eliminate the waiver requirement from the rule and simply supervise to established safety-and-soundness standards;

• distinguish in the rule between seeking forbearance about an existing loan and waiver for a prospective loan; and

• eliminate the two-year experience requirement in 12 CFR 723.5(a).

A fourth commenter suggested that NCUA should:

• enlarge to 20 percent of net worth the amount of construction and development loans that may be held;

• extend the exemption for construction loans for which the borrower has contracted to purchase the property to include financing land for residential builders where infrastructure is already in place;

• expand the categories of parties not required to provide a personal guarantee of repayment, and allow in some cases for a guarantee to be limited to ownership interest in the corporate borrower;

• increase to $500,000 the aggregate limit on loans to members or groups of associated members, and exclude the limit altogether in cases in which a loan has been transferred to ''special assets,'' with an established reserve;

• eliminate or clarify the references in the definition of construction and development loans to ''major renovations,'' which is potentially subject to different interpretation; and

• streamline and automate the waiver process, using standardized documents.

Maximum Borrowing

One commenter addressed this provision, and suggested that NCUA change the requirement that federally insured, state-chartered credit unions must request approval for a waiver from the regional office so that only notice, not approval, is required.[17] As an alternative, the commenter proposed that NCUA develop and impose a 30-day deadline for action by the regional office on requests for approval.

Leasing

One commenter commented on this section.[18] The commenter suggested that NCUA allow credit unions to determine for themselves whether to obtain a full assignment. The commenter also proposed that NCUA add more flexibility to the rule in terms of residual value limits.

b. Investment and Deposits

Designation of Low-Income Status

Receipt of Secondary Capital Accounts by Low-Income Designated Credit Unions

One commenter addressed this issue and proposed that NCUA eliminate the compliance burden on federally insured, state-chartered credit unions regarding limits

[10] Purchase of assets and assumption of liabilities, 12 CFR 741.8.

[11] Conversion of insured credit union to mutual savings bank, 12 CFR part 708a.

[12] Mergers of federally insured credit unions, 12 CFR part 708b.

[13] 79 FR 32,191, (June 4, 2014) and 12 CFR 701.21.

[14] Share, share draft, and share certificate accounts, 12 CFR 701.35.

[15] 12 CFR part 723.

[16] The entire waiver system has been eliminated from the revised rule.

[17] Maximum borrowing provision, 12 CFR 741.2.

[18] 12 CFR part 714.

on secondary capital accounts by leaving this issue to state law.[19]

Payment on Shares by Public Units

One commenter addressed this provision and recommended that NCUA eliminate compliance burden on federally insured, state-chartered credit unions by allowing limitations on the receipt of public unit deposits to be determined exclusively by applicable state law.[20]

Fixed Assets

One commenter addressed this provision.[21] The commenter proposed that NCUA raise the regulatory exemption in the current rule from $1 million to $50 million, and also add a *de minimis* exception for occupancy and raw land ownership.

Investment and Deposit Activity

One commenter addressed this provision and suggested that NCUA allow federal credit unions to purchase mortgage servicing rights as an investment.[22]

Credit Union Service Organization

Three stakeholders commented on this provision.[23] One questioned whether NCUA had legitimate authority to regulate credit union service organizations, CUSOs, directly. This commenter proposed that NCUA should remove the extra regulatory requirements affecting CUSOs engaged in complex or high-risk activities. The commenter further suggested that NCUA scale back the application of the rule to federally insured, state-chartered credit unions. Another commenter proposed the elimination of the regulatory requirement that CUSOs submit financial reports directly to NCUA. This commenter also requested that NCUA change the rule to increase the amount a federal credit union may invest in a CUSO and expand the scope of permissible CUSO activities. A third commenter cautioned that NCUA should use existing registration systems to capture CUSO data, rather than developing a new system, which the commenter indicated has the potential of being very burdensome.

c. Miscellaneous Activities

Federal Credit Union Bylaws

Two commenters addressed this topic;[24] both urged that NCUA update and streamline the bylaws to assure maximum flexibility and ease of use; one of the commenters identified specific changes to articles IV, V, and VII of the federal credit union bylaws.

3. Agency Programs

Community Development Revolving Loan Program

One commenter requested a change in the language of this section,[25] to the extent that it calls for the state regulatory authority to ''concur'' in a state-chartered credit union's application for membership in this program. Instead, the commenter suggested that the language in the rule be changed so as not to imply that the state regulator was validating the application, but rather simply recognizing it.

Central Liquidity Facility

Three commenters characterized as burdensome the requirement of purchasing stock in the Central Liquidity Facility as a prerequisite to membership and borrowing.[26] Two commenters also recommended that the Central Liquidity Facility be authorized to make short-term loans, and all three commenters encouraged NCUA to identify and support necessary legislative changes regarding the CLF to Congress.

Low-Income Designation

Four commenters addressed the low-income designation program.[27] Three advocated liberalizing the program, urging exercise of the authority to the fullest extent possible, along with expanding the universe of credit unions that are eligible for the designation. Suggestions included improving transparency, redefining the concept of ''low income'' to include other flexible standards relating to total median earnings, extending the statistical approach to include military personnel and other low-salaried people, permitting credit unions to self-designate their status as low income, expanding the benefits available to qualifying credit unions, and permitting a credit union that has achieved the designation to continue with it without having to requalify at a subsequent date. Two commenters advocated making the designation permanent. Two commenters advocated permitting credit unions to achieve the designation without having to resort to a statistical analysis, for example by permitting reference to historical performance, a certified mission statement, or based on offering products tailored specifically to meet the needs of low-income people.

One commenter suggested changing the rules applicable to federally insured, state-chartered credit unions so that NCUA, not the state regulatory authority, makes the initial designation, with the state then concurring. The same commenter noted that currently the federally insured, state-chartered credit union designation is covered by guidance, not a rule, and suggested that this disparity be addressed so that both state and federal charters get similar treatment under the rule. The commenter noted that coverage of federally insured, state-chartered credit unions in general is not clear under the current rule, which refers only to federal credit unions. This commenter also sought clarification under the rule for the mechanics of how credit unions that no longer meet the designation criteria are to be handled. The commenter suggested that compliance should be determined over four consecutive quarters; if a credit union during that time falls out of compliance, it should be given five years to come back into compliance before being treated as a non-designated institution. The commenter recommended that 12 CFR 701.34(a)(5) be eliminated from the rule, insofar as the time period identified therein has elapsed.

With regard to secondary capital for low-income designated credit unions, one commenter suggested that the issue should be governed by state law for federally insured, state-chartered credit unions; another commenter requested greater flexibility with respect to secondary capital, including permitting natural persons to make investments in the form of secondary capital, and to allow a committee of the board of directors to approve the redemption of secondary capital.

4. Capital Requirements

Focusing on 12 CFR part 702, prompt corrective action, several commenters noted that, in view of the agency's determination to re-issue its risk-based capital rule, they would stand by their separate comments submitted in response to that initiative. One commenter did note, however, that the recent final rule governing capital planning and annual stress testing for credit unions with assets over $10 billion was ''inappropriate, costly, and unnecessary.''[28] This commenter argued that the rule was burdensome and did little to enhance the security of the National Credit Union Share Insurance Fund. Two others complained that NCUA had not demonstrated why a risk-based capital rule is necessary. Another commenter advocated a change in the law so as to allow contributed capital to count toward net worth. This commenter also argued that, in terms of risk-based net worth, $100 million presents a threshold that is too low to support the ''complex credit union'' designation; rather, the proper threshold should be $500 million. In addition, according to this commenter, consideration should be given to factors other than just asset size.

One commenter sought clarification in 12 CFR 702.206 that, with respect to federally insured, state-chartered credit unions, NCUA would share its reasoning with the state regulator concerning the adequacy of a net worth restoration plan and allow the regulator to provide its feedback, not just tell the regulator of its decision. This commenter expressed similar views with respect to NCUA's evaluation of a federally insured, state-chartered credit union's business plan. Finally, this commenter noted that it would be submitting several comments directly in response to NCUA's issuance in January 2015 of proposed amendments on the subject of capital planning and stress testing. Previewing those comments, this commenter suggested that the rule be changed to include a definition of capital policy, clarify the standards under which a credit union-administered stress test will be evaluated, include criteria under which NCUA will allow self-testing, and clarify how the agency expects institutions to conduct the stress tests on their own once that is permissible under the rule.

[19] 12 CFR 701.34.

[20] 12 CFR 701.32.

[21] 12 CFR 701.36.

[22] 12 CFR part 703.

[23] 12 CFR part 712.

[24] 12 CFR 701.2; appendix A to part 701.

[25] 12 CFR parts 705 and 725; and 12 CFR 701.34 79 (FR 75,763 (December 19, 2014)).

[26] 12 CFR part 725.

[27] 12 CFR 701.34.

[28] Capital—12 CFR part 702 and 12 CFR 741.3 (79 FR 75,763 (December 19, 2014)).

5. Consumer Protection

Truth in Savings

One commenter stated that the current disclosure form in use for this rule is outdated, costly, and burdensome, and does not work with currently available technologies.[29] The commenter noted that, given that many people now do their shopping online, credit unions need to be able to provide required disclosures in electronic format. The commenter observed that development and use of required disclosures may require the involvement of and coordination with the CFPB and the Federal Reserve Board. The commenter also recommended that credit unions be allowed to offer their members the opportunity to elect to receive disclosures electronically within 10 days of account opening or the assessment of fees. The commenter also advocated disclosures to be provided in electronic format as well as paper disclosures. Two commenters advocated that the rule be revised to permit the use of abbreviated statements when using electronic media. Two commenters advocated elimination of the requirement in 12 CFR 707.5 mandating the advance issuance of certain disclosures. One commenter noted that citations in current staff interpretation to 12 CFR 707.2 are incorrect. One commenter advocated that the language in 12 CFR part 707 make clear that references to dividends include interest.

Advertising

One commenter noted the ambiguity in the rule, for example with respect to minimum font size and style, as it relates to advertisements accessed through the Internet. This commenter included several examples of signage and logos that it uses or proposes to use. The commenter seeks clarification in the rule as to how it would apply in the texting arena, which presents challenges in terms of available space, among other things. The commenter noted a similar concern with respect to the application of the rule to its computerized telephone teller system. One commenter noted that applying 12 CFR part 740 to social media is ''unclear, complicated, and burdensome.'' Three commenters expressed similar, generalized concerns that application of 12 CFR part 740 to the various electronic and social media that are available needs streamlining, updating, and clarification, and one sought elimination altogether of the font size requirement for print media. In a similar vein, one commenter asked for liberalization of the required use of the advertising notice so that it need not be used except in cases in which the radio or television ad is at least 30 seconds in duration. This commenter also sought implementation of a mechanism by which translations into a foreign language could be standardized and approved in advance and thus readily available. This commenter also noted that implementation of the Federal Financial Institutions Examination Council's approved social media policy is quite difficult and possibly in conflict with part 740. Another commenter noted a difficulty in discerning whether NCUA or CFPB rules take precedence in this area, for example with respect to Regulation Z and its interaction with part 740, and encouraged NCUA to work closely with the CFPB to coordinate and communicate each agency's respective authority. The commenter urged NCUA to persuade the CFPB to provide safe harbor to credit unions following NCUA rules.

National Credit Union Share Insurance Coverage for IOLTAs

Three commenters urged NCUA to work with the national trade associations to implement a recent statutory change by which lawyers' trust accounts may now qualify for pass-through insurance coverage,[30] including the expansion to other types of escrow accounts such as ones used by realtors and funeral directors, as well as to stored value cards and prepaid cards.

Flood Insurance

One commenter requested greater clarification in this rule concerning the delineation of responsibility between the lender and the insurer.[31] Noting some areas of flexibility in the rule, the commenter asked that it be amended to provide more flexibility with respect to the delivery and timing of required notices. This commenter noted with approval the various areas in the rule in which sample notices are provided, and asked that NCUA expand this universe to include others, such as an ''acknowledgement of receipt'' form. One commenter asked that NCUA review and simplify the escrow requirements in the rule, and also encouraged NCUA to assure that the provisions and requirements in this rule are compatible with Regulation Z.

Uninsured Membership Shares

One commenter characterized the required reporting of this item in the form 5300 Call Report as needlessly tedious and time consuming, and advocated that NCUA simplify the rule to require that reporting be done on an annual, not quarterly, basis.[32] One commenter advocated that NCUA specifically allow federally insured, state-chartered credit unions to accept uninsured share deposits if approved by the pertinent state regulatory authority.

Fair Credit Reporting—Identity Theft Red Flags

One commenter suggested that NCUA amend its rule to reflect more thoroughly that most of the provisions in 12 CFR part 717 have been transferred to the CFPB.

6. Corporate Credit Unions

Acknowledging the importance of the corporate credit union system, and that rule changes were necessary in 2010 in response to the financial crisis,[33] two commenters urged NCUA to find ways to modernize and liberalize the requirements imposed by that rule change. For example, one commenter recommended an increase in the secured borrowing limit from 180 days to two years to enable corporates to offer true liquidity lending. In a similar vein, two commenters suggested that the rule be changed to allow for an outright suspension of the limit during periods of economic stress. One commenter also advocated that NCUA be more transparent in its description of how assets acquired from the failed corporates will be disposed of, and in its description of its strategy and timeline for satisfying the agency's obligations to the Temporary Corporate Credit Union Stabilization Fund.

Other suggestions involving the corporate rule included moving the voting-record requirement currently contained in 12 CFR 704.13 to the bylaws, and reviewing and liberalizing the requirements in 12 CFR 704.15 regarding audit and reporting requirements, which were characterized by two commenters as overly strict and unnecessary for corporates. One commenter stated that NCUA's approach under 12 CFR part 704 has had the result of homogenization of the corporate industry. Regulatory control over corporates has been monopolized at the federal level, leaving no room for diversification of approaches and possible innovation to occur at the state level, even though six corporates are state-chartered, the commenter stated. According to this commenter, a change in approach, like what has occurred with natural person credit unions and the member business lending rule, would enhance safety and soundness.

7. Directors, Officers, and Employees

General Authorities and Duties of Federal Credit Union Directors

Commenters sought greater clarity and specificity concerning the agency's expectations in this area.[34] For example, one commenter noted that the requirement in the rule for directors to act without discrimination against any member is too uncertain in its meaning and its application. Another commenter suggested that all requirements in this area be collected and codified in an appendix to this section of the rule. The commenter also suggested that NCUA should update the *Examiner's Guide* to clearly articulate which ''major policies'' need board approval. Noting that federal credit union board members are generally volunteers, two commenters urged that NCUA be as clear as possible about supervisory expectations, including identifying policies that require board approval. One commenter expressed concern that the requirements in the rule are already covered by applicable state law governing fiduciary duties of directors and so are redundant, and questioned whether ''financial literacy'' was sufficiently defined. The commenter also questioned why this was included as a duty, and also suggested that NCUA should require only one director to meet the financial literacy requirement.

[29] Consumer Protection—12 CFR parts 707, 717 (subpart J), 740, 745, and 760; 12 CFR 701.3, 701.31, 717.82, 717.83, 741.5, 741.9, and 741.10. (79 FR 75,763 (December 19, 2014)).

[30] Share insurance, 12 CFR part 745.

[31] Flood insurance, 12 CFR part 760.

[32] Uninsured membership shares, 12 CFR 741.9.

[33] Corporate credit unions, 12 CFR part 704, 80 FR 36,252 (June 24, 2015).

[34] 12 CFR parts 711, 713 and 750; 12 CFR 701.4, 701.19, 701.21(d), and 701.33. 80 FR 36,252 (June 24, 2015).

Loans and Lines of Credit to Officials

One commenter, after noting general support for the restrictions and safeguards in the rule governing loans to insiders, suggested that a change to 12 CFR 701.21(c)(8) was warranted. This section prohibits credit union officials, employees, and family members from receiving incentive payments or outside compensation from loans issued by credit unions. The rule contains an exception, and permits such compensation if based on the credit union's ''overall financial performance.'' The commenter suggested that the section be amended to include loan growth as an acceptable measure of overall financial performance, and also to direct examiners to exhibit more flexibility when determining what constitutes ''overall financial performance'' within the meaning of the rule.

Reimbursement, Insurance and Indemnification of Officials and Employees

One commenter has noted that NCUA has issued numerous opinions over the years interpreting permissible ''compensation'' for the one federal credit union board member who may be compensated for his or her work as a director. The commenter suggests these letters should be codified into an appendix to 12 CFR 701.33. One commenter stated that the provisions governing indemnification of federal credit union officials, 12 CFR 701.33, are confusing, onerous, and potentially in conflict with state law provisions governing the same topic. In addition, the commenter noted a potential conflict that could exist for a federal credit union that elected not to adopt NCUA's 2007 version of the federal credit union bylaws. Three commenters noted, generally, that the rules governing indemnification are cumbersome and vague, and may well have the unintended consequence of discouraging capable individuals from serving on federal credit union boards.

Fidelity Bonds and Insurance Coverage

One commenter specifically asked that NCUA codify separately those elements of 12 CFR part 713 that apply to federally insured, state-chartered credit unions, instead of the current approach, in which a cross reference to part 713 is set out in 12 CFR 741.201.

Golden Parachutes; Indemnification

Two commenters suggested that the provisions of 12 CFR part 750 are cumbersome, with standards that are too vague and that enable too much second guessing on the part of examiners. These commenters suggested that NCUA should liberalize the rule, revising it so that it meets agency objectives while still protecting worthy officers and directors.

8. Anti-Money Laundering

While acknowledging the importance of the Bank Secrecy Act, four commenters urged greater cooperation and coordination between NCUA and the Financial Crime Enforcement Network, or FinCEN, to ensure sensible regulations and exams that are tailored to actual risks affecting credit unions.[35] Two commenters also suggested that NCUA should work closely with the FinCEN and the Office of Foreign Assets Control to minimize the regulatory burden on credit unions, reduce the incidence of required production of duplicate information, provide greater flexibility for credit unions, and curtail the continuous due diligence requirements. These two commenters also sought to enlist NCUA's support for increases in the thresholds for filing currency transaction reports and reductions in the amount of required suspicious activity reporting, both of which are, according to these commenters, of limited usefulness to law enforcement.[36] Another commenter requested that NCUA provide a more clear and thorough explanation of examination policies in this area. The commenter also suggested that examiners be allowed more autonomy and flexibility in this area, instead of the current practice (according to this commenter) which requires immediate reporting through the NCUA chain of command.

Under 12 CFR 748.1(c)(4), a credit union must promptly notify its board of directors, or designated committee, of any suspicious activity report filed. NCUA has defined ''promptly'' in this context to mean at least monthly. One commenter suggested a liberalization of the rules to allow ''promptly'' to mean at the next board meeting, to allow a credit union to be in compliance even where its board typically meets every other month. Another commenter suggested NCUA clarify or amend its policy, as reflected in the federal credit union bylaws, to enable a federal credit union to expel a member who has engaged in illegal activity such as money laundering. This would simply require a policy statement to the effect that such a member may be deemed by the federal credit union to be ''non-participating'' within the meaning of the bylaws.

9. Rules of Practice and Procedure

Examination Appeals

Three commenters expressed concern about the process by which an appeal of an examination finding may be pursued.[37] All three commenters advocated a more formalized and established appeals procedure for the resolution of examination disputes. One commenter suggested NCUA issue an advance notice of proposed rulemaking to generate comments and ideas on how best to proceed in this area, noting that the current procedures are underutilized. The consensus of the three commenters addressing this area was that NCUA should develop and implement a process that is transparent, neutral, and effective in providing a forum for credit unions to dispute examination findings.

One commenter requested a clarification or amendment to 12 CFR 747.202, which presently provides that NCUA might seek a charter revocation in the event a federal credit union is found to have committed ''any violation'' of its bylaws or charter. The commenter noted that this language could benefit from the addition of a qualifier so that potential exposure to such an action would only be in the case of a ''material violation,'' as opposed to a technical one.

Liquidation Payout Priorities

One commenter recommended NCUA take action now to amend its rules governing liquidation to establish the creditor payout priority that will become applicable if supplemental capital becomes an available option for all credit unions.[38] The commenter noted that, although federal law controls in determining whether supplemental capital counts toward regulatory capital, the issuance itself is a function of state law for federally insured, state-chartered credit unions.

10. Safety and Soundness

Lending

Three commenters addressed the NCUA Payday Alternative Loan rule.[39] Two recommended that NCUA refrain from using prescriptive requirements in the rule, such as aggregate limits, minimum balance and maturity requirements, and minimum length of time for members to qualify for the loans. One commenter urged NCUA to resist efforts by the CFPB to regulate credit union programs, for example by establishing a maximum number of times a loan may be rolled over.

One commenter sought clarification in the lending rule concerning how the term ''overall financial performance,'' which may be considered in compensating loan officers, squares with the prohibition on the payment of incentive pay. Another recommended NCUA modify the approach it currently takes in the lending rule concerning its evaluation of whether to permit federally insured, state-chartered credit unions to comply with state law for exceptions relating to prohibited fees and non-preferential loans. The commenter recommended that, in evaluating such state laws, NCUA focus on the substantive impact on safety and soundness and not on requiring the state law to be identical in order for NCUA to accept it. The commenter recommended NCUA resurrect the approach formerly taken in the member business loan rule in which NCUA focused on substantive safety-and-soundness considerations and did not require that a state rule be identical in order to be approved.[40] Another commenter advocated that NCUA adopt a principles-based approach to the provisions in 12 CFR 701.21(h), pertaining to acquiring interests in

[35] Anti-money laundering—12 CFR part 748 (80 FR 36,252 (June 24, 2015)).

[36] The gist of the comments has been forwarded to FinCEN.

[37] Rules of practice and procedure—12 CFR parts 709, 710, and 747 (80 FR 79,953 (December 23, 2015)).

[38] 12 CFR part 709.

[39] Safety and soundness—12 CFR parts 703, 715, 722, 741, 748 (including appendices), and 749; 12 CFR 701.21 (80 FR 79,953 (December 23, 2015)).

[40] The commenter noted its objection to the mechanism NCUA settled upon in the recently finalized member business loan rule, in which the agency has indicated its review of state laws purporting to govern business lending will focus on whether the state rule covers all aspects addressed in NCUA's rule and is ''no less restrictive'' than NCUA's rule.

auto loans being serviced by third parties, as opposed to the prescriptive measures currently in the rule.

One commenter noted the need for clarification under 12 CFR 701.22 (which was not included in the categories covered by the fourth notice) as to the status of an automobile dealer who originates and transfers loans to a credit union. The commenter suggested that 12 CFR 701.22 clarify that a dealer acting in that capacity be characterized in the rule as an agent of the credit union. The commenter also recommended the rule be cross-referenced in 12 CFR part 741 as being applicable to federally insured, state-chartered credit unions.

Investments and Deposits

One commenter suggested NCUA permit credit unions, if necessary on a pilot basis, to purchase mortgage servicing rights from other lenders, including other credit unions. The commenter argued that this would help smaller credit unions that originate mortgages but are not able to hold them in portfolio. The commenter also advocated an expanded use of the pilot program option, with a view toward greater innovation and better alignment with what is permissible under the Federal Credit Union Act. The commenter believes this will encourage development of safe, innovative investment products that will ultimately be beneficial to the members. One commenter noted that references in 12 CFR part 703 to the National Association of Securities Dealers, or NASD, should be changed to the Financial Industry Regulatory Authority, or FINRA.

Supervisory Committee Audits

One commenter advocated amending the applicability threshold of the rule from $10 million to $100 million, to align with recent changes to the definition of ''small credit union'' in other rules. Another commenter identified a need for clarification as to which aspects of 12 CFR part 715 are made applicable to federally insured, state-chartered credit unions through 12 CFR part 741. The commenter noted that the rule (as well as elsewhere), would benefit from inclusion in part 741, rather than a cross reference as in the current rule.

CyberSecurity Programs and Related Issues

Three commenters urged NCUA to encourage action by FinCEN to reduce burden by liberalizing its rules concerning reporting and related obligations under the Bank Secrecy Act, such as to increase the reporting threshold for wire transfers, currency transactions, and suspicious activity reports. Two commenters sought clarification under appendix B to 12 CFR part 748 as to what the obligation of a credit union is, if any, in the case of a breach affecting sensitive member information that occurs at a third party, such as a merchant, and not at the credit union itself. Three commenters requested that NCUA clarify and confirm that use by credit unions of the cyber assessment tool recently developed by the Federal Financial Institutions Examination Council is voluntary, not mandatory. Along this line, two commenters urged that NCUA not make the tool a benchmark in IT exams.

Recordkeeping

Three commenters noted burdens associated with the requirement in 12 CFR part 749 that certain records be maintained indefinitely. These commenters assert the costs associated with this requirement significantly outweighs any benefit. For example, keeping member statements indefinitely serves no real purpose, particularly after any applicable statute of limitations has expired. Instead, these commenters urge that NCUA revise the rule so that retention periods are consistent with applicable statutes of limitations or other guidelines, such as the five-year retention requirement described in appendix P of the FFIEC's ''Bank Secrecy Act Examination Manual.'' One commenter noted that the retention obligation for member statements should conform to that which governs canceled checks (characterized by the commenter as being seven years). These commenters noted that there are real costs associated with compliance with the current rule, despite the ability to convert records to electronic format. One commenter also requested clarification in the rule as to what each listed record must include.

Examinations

Three commenters expressed general concern about examiners and the exam process.[41] One noted that, on some occasions, examiners may become overly defensive and insistent that guidance is actually mandatory. Three commenters urged NCUA to place greater reliance on state examinations and reports of examination in connection with federally insured, state-chartered credit unions, such that federal examiners need not participate in every exam. Another suggestion was to have annual exams alternate between state and federal, with the state's one year and NCUA's the next. One commenter noted that, within the last five years, the addition of the CFPB as a regulatory authority has added a degree of urgency to reducing burdens in this area.

Two commenters also requested that NCUA conduct exams less frequently; one of these urged NCUA to move to an 18-month exam cycle, especially for smaller credit unions and those with a low risk profile. Such an approach, according to these commenters, would provide NCUA with greater flexibility in balancing staff and resources and would result in significant burden reduction for credit unions. One commenter urged that NCUA implement this move before the effective date of the risk-based capital rule. One commenter offered support for revisions to the Call Report for non-complex credit unions, as well as updates and improvements to the protocol for the Automated Integrated Regulatory Examination System, or AIRES, with one likely result being less time spent on-site by examiners.

Appraisals

One commenter proposed that NCUA revise its rule in the appraisal area to conform to that which applies to banks by eliminating the requirement of an appraisal for business loans under $1 million for which repayment is not dependent on sales of real estate parcels or income generated by the property.[42] The same commenter encouraged NCUA to include a waiver process in the rule for business loans that exceed this threshold. Another commenter noted that the federal bank regulatory agencies may be considering raising the threshold (currently $250,000) at which loans must include an appraisal by a licensed or certified appraiser. The commenter recommended that NCUA follow suit if the bank regulators decide to raise the threshold.

Liquidity and Contingency Funding

One commenter proposed that NCUA consider liberalizing its current rule by raising the threshold for applicability of the rule from $50 million in assets to $100 million.[43] Another commenter proposed periodic review and revision as appropriate to the asset size category in the rule of between $50 million and $250 million. One commenter additionally questioned the need to add an ''S'' for market sensitivity to the CAMEL rating system, noting that credit unions differ significantly from banks and that NCUA may not need to add the separate market sensitivity indicator to its exam protocol. One commenter, noting that interpretation of the rule had become rigid and complicated, urged NCUA to provide more flexibility in the rule to enable credit union management to take a greater role in managing their own risk.

Regulations Codified Elsewhere

One commenter urged NCUA to conduct a thorough review and revision of 12 CFR part 741, to minimize potential confusion for credit unions in determining which aspects of rules pertain to them. For example, 12 CFR part 741 includes a cross reference to 12 CFR part 715, pertaining to supervisory committee audits, but does not specify what sections of part 715 are applicable. Similar issues exist, according to this commenter, with NCUA rules on appraisals, bond requirements, and loan participations.

This commenter recommended a reorganization of part 741 so that all regulations or portions thereof that are applicable to federally insured, state-chartered credit unions are set out in one place, rather than simply cross-referenced. This commenter also suggests a clarification in 12 CFR 741.204 to provide that NCUA is allowed to act regarding a low-income designation for a federally insured, state-chartered credit union when state law does not provide express authority to the state regulator to act. Similarly, according to this commenter, 12 CFR 741.206 should make allowance for corporate credit unions to be chartered at the state level, and 12 CFR 741.208 should be amended to specify that state law should govern the conversion of a federally insured, state-chartered credit union to non-federal insurance. Finally,

[41] 12 CFR 741.1.

[42] Appraisals, 12 CFR part 722.

[43] Liquidity and contingency funding, 12 CFR 741.12.

according to this commenter, 12 CFR 741.214 should be amended to reflect that, in cases where the board of directors meets every other month, notice to the board of security incidents on that same basis will be considered sufficiently prompt for compliance purposes.

Total Comments Received, by Type

In response to its four published notices soliciting comment on its 10 categories of rules, NCUA received a total of 25 comments. Of these, eight were generated by national trade associations, four by a national association representing state credit union regulators, six by regional trade associations, two by state trade associations, and five by credit unions.

Following the conclusion of the comment solicitation process, EGRPRA calls for the agencies to review and evaluate the comments and to eliminate unnecessary regulations to the extent that such action is appropriate. The process concludes with a report to Congress. As discussed more fully below, the NCUA Board has already taken steps to consider and reduce when possible and appropriate, credit unions' regulatory burdens.

IV. Significant Issues; Agency Response

The NCUA Board's efforts to identify credit union compliance burdens and adapt policies and regulations to address those burdens have never been a higher priority than they are now. To that end, the Board's EGRPRA review and its rolling three-year assessment of all NCUA regulations combine with other initiatives to help achieve the Board's objectives for greater supervisory efficiencies while providing fair yet effective oversight that will mitigate compliance costs for well-run credit unions. At their core, the Board's regulatory relief actions today and into the future must rest on a strong and reinforced safety and soundness foundation.

The issues covered in these initiatives were often addressed by commenters in response to one or more of the **Federal Register** notices issued by the Board consistent with EGRPRA. The agency's principal regulatory relief actions, categorized by broad subject matter, are discussed in greater detail below.

Field of Membership

Credit unions are limited to providing service to individuals and entities that share a common bond, which defines their field of membership. The NCUA Board diligently implements the Federal Credit Union Act's directives regarding credit union membership.

In October 2016, the NCUA Board modified and updated its field of membership rule addressing issues such as:

• the definition of a local community, rural district, and underserved area;

• multiple common-bond credit unions and members' proximity to them;

• single common-bond credit unions based on a trade, industry, or profession; and

• the process for applying to charter or expand a federal credit union.

At the same time it approved the final rule, the Board issued a new proposed rule covering several additional issues pertaining to chartering and field of membership to seek further public comment. Included among the enhancements that are being considered for adoption by the agency is a procedure under which persons or entities wishing to register public comments regarding a proposed community-based field of membership application may do so prior to definitive action by the agency.

Plans are also being implemented to upgrade the NCUA's technology platform to allow credit unions seeking a field of membership expansion to track the status of their applications online throughout the application and approval process. The NCUA Boards intends that the updated system will be operational by April 2017.

Member Business Lending

Congress has empowered the Board to implement the provisions in the Federal Credit Union Act that address member business loans.

A final rule adopted by the NCUA Board in February 2016 was challenged by the Independent Community Bankers of America, but was affirmed by the District Court for the Eastern District of Virginia in January 2017. The final rule, approved unanimously by the Board, is wholly consistent with the Act as the Court reinforced and contains regulatory provisions which:

• give credit union loan officers the ability, under certain circumstances, to no longer require a personal guarantee;

• replace explicit loan-to-value limits with the principle of appropriate collateral and eliminating the need for a waiver;

• lift limits on construction and development loans;

• exempt credit unions with assets under $250 million and small commercial loan portfolios from certain requirements; and

• affirm that non-member loan participations, which are authorized under the Federal Credit Union Act, do not count against the statutory member business lending cap.

Federal Credit Union Ownership of Fixed Assets

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 some explicit timeframe. 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. The proposal, which remains pending, would also clarify that, under the rule, ''partial occupancy'' means occupation of 50 percent of the relevant space.

Expansion of National Credit Union Share Insurance Coverage

With the enactment by Congress of the Credit Union Share Insurance Fund Parity Act in December 2014, NCUA was expressly authorized to extend federal share insurance coverage on a pass-through basis to funds held on deposit at federally insured credit unions and maintained by attorneys in trust for their clients without regard to the membership status of the clients.[44]

Many industry advocates, including some EGRPRA commenters, urged NCUA to consider ways to expand this type of pass-through treatment to other types of escrow and trust accounts maintained by other professionals on behalf of their clients. The NCUA Board issued a proposed rule in April 2015, inviting comment on ways in which the principles articulated in the Parity Act might be expanded into other areas and types of account relationships.

Reviewing the numerous comments received in response to this invitation, the agency undertook extensive research and analysis and concluded that some expansion of this concept into other areas was warranted and legally permissible. Accordingly, in December 2015, the NCUA Board unanimously approved the issuance of a final rule by which expanded share insurance coverage on a pass-through basis would be provided under which a licensed professional or other fiduciary holds funds for the benefit of a client or principal as part of a transaction or business relationship. As noted in the preamble to the final rule, examples of such accounts include, but are not limited to, real estate escrow accounts and prepaid funeral accounts.

Improvements for Small Credit Unions

The credit union system is characterized by a significant number of small, minority, and women owned credit unions. NCUA is acutely aware that the compliance burden on these institutions can become overwhelming, leading to significant expense of staff time and money, strain on earnings, and, ultimately, consolidation within the industry as smaller institutions are unable to maintain their separate existence.[45] While this is a difficult, multi-faceted problem, NCUA is committed to finding creative ways to ease that burden without unduly sacrificing the goal of safety and soundness throughout the credit union system.

The agency has approached this problem from several different angles. Among the adjustments and improvements implemented within the more recent past are the following:

• Responding to requests from commenters and other representatives of credit unions, NCUA considered whether to raise the asset threshold for defining a small credit union under the Regulatory Flexibility Act. In February 2015, the NCUA Board unanimously approved a proposed rule that would raise the definitional threshold from $50 million to $100 million. Doing so, the Board determined, would lay the groundwork for potential regulatory relief for three-fourths of all credit unions in future rulemakings. The Board adopted the rule in September 2015. At the time, the change made an additional 733 federally insured credit unions eligible for special consideration of regulatory relief in future rulemakings, and these institutions are

[44] Public Law 113–252.

[45] Along these lines, the agency is considering whether enhanced disclosure requirements in the merger context are appropriate, particularly in relation to payments made to merging credit union officials in connection with the change of control.

eligible to receive assistance from NCUA's Office of Small Credit Union Initiatives, including training and consulting. With this latest adjustment, the asset ceiling for small credit unions is now 10 times higher than what it was in 2009.

• Responding to requests to facilitate access to and use of secondary capital by low-income credit unions (of which a significant percentage are also small), the agency has developed a more flexible policy. Investors can now call for early redemption of portions of secondary capital that low-income credit unions may no longer need. These changes also were designed to provide investors greater clarity and confidence.[46]

• The process by which credit unions may claim the low-income designation has also been streamlined and improved. Now, following an NCUA examination, credit unions that are eligible for the designation are informed by NCUA of their eligibility and provided with a straightforward opt-in procedure through which they may claim the low-income designation. During the five-year period ending December 31, 2015, the number of low-income credit unions increased from 1,110 to 2,297, reflecting an increase over that time frame of 107 percent, with more than a third of credit unions receiving the low-income designation. Together, low-income credit unions had 32.5 million members and more than $324.7 billion in assets at year-end 2015, compared to 5.8 million members and more than $40 billion in assets at the end of 2010.

• Explicit regulatory relief: Small credit unions have been expressly exempted from the NCUA's risk-based capital requirements. Small credit unions have also recently received a reprieve from compliance with NCUA's rule pertaining to access to sources of emergency liquidity.

• Expedited exam process: NCUA has created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2, or 3 and assets of up to $50 million. These expedited exams require less time by examiners on site, and focus on issues most likely to pose threats to the smallest credit unions.

• CDFI enhancements: NCUA signed an agreement in January 2016 with the Department of the Treasury's Community Development Financial Institutions Fund to double the number of credit unions certified as Community Development Financial Institutions within one year. NCUA is leveraging data it routinely collects from credit unions to provide a pre-analysis and to assist in the streamlining of the CDFI application process. In addition, NCUA recently adopted several technical amendments to its rule governing the Community Development Revolving Loan Fund. The amendments update the rule and make it more succinct, improving its transparency, organization, and ease of use by credit unions.

[46] See *https://www.ncua.gov/newsroom/Pages/NW20150406NSPMSecondaryCapital.aspx* for more information about the low-income credit union secondary capital announcement.

Expanded Powers for Credit Unions

Enhanced powers for regulated institutions, consistent with statutory requirements, can have a significant beneficial effect that is similar in some ways to the impact of reducing compliance burden. The NCUA has taken several recent steps to provide federal credit unions with broader powers. These enhancements, as discussed below, have positioned credit unions to take better advantage of the activities Congress has authorized to strengthen their balance sheets.

• In January 2014, the NCUA Board amended its rule governing permissible investments to allow federal credit unions to invest in certain types of safe and legal derivatives for hedging purposes. This authority enables federal credit unions to use simple ''plain vanilla'' derivative investments as a hedge against interest rate risk inherent in their balance sheet.

• In February 2013, the NCUA Board amended its investment rule to add Treasury Inflation Protected Securities to the list of permissible investments for federal credit unions. These securities provide credit unions with an additional investment portfolio risk-management tool that can be useful in an inflationary economic environment.

• At its open meeting in March 2016, the NCUA Board further amended its investments rule to eliminate language that unduly restricted federal credit unions from investing in bank notes with maturities in excess of five years. With the change, credit unions are now able to invest in such instruments regardless of the original maturity, so long as the remaining maturity at the time of purchase is less than five years. This amendment broadens the range of permissible investments and provides greater flexibility to credit unions consistent with the Federal Credit Union Act.

• In December 2013, the NCUA Board approved a rule change to clarify that federal credit unions are authorized to create and fund charitable donation accounts, styled as a hybrid charitable and investment vehicle, as an incidental power, subject to certain specified regulatory conditions to ensure safety and soundness.

Consumer Complaint Processing

Responding to comments received by interested parties, NCUA conducted a thorough review of the way in which it deals with complaints members may have against their credit union. In June 2015, the agency announced a new process, as set out more fully in Letter to Credit Unions 15–CU–04. The new process refers consumer complaints that involve federal financial consumer protection laws or regulations for which NCUA is the primary regulator to the credit union, which will have 60 days to resolve the issue with its member before NCUA's Office of Consumer Financial Protection and Access considers whether to initiate a formal investigation of the matter. Results of the new process have been excellent, with the majority of complaints resolved at the level closest to the consumer and with minimal NCUA footprint.

Interagency Task Force on Appraisals

Twelve CFR part 722 of NCUA's rules establishes thresholds for certain types of lending and requires that loans above the thresholds must be supported by an appraisal performed by a state certified or licensed appraiser. The rule is consistent with an essentially uniform rule that was adopted by the banking agencies after the enactment of FIRREA. The rule covers both residential and commercial lending.[47]

In response to comments received through the EGRPRA process, NCUA joined with the banking agencies to establish an interagency task force to consider whether changes in the appraisal thresholds are warranted. Work by the task force is underway, including the development of a proposal to increase the threshold related to commercial real estate loans from $250,000 to $400,000. Any other recommendation developed by the task force will receive due consideration by NCUA.

V. Other Agency Initiatives

The foregoing discussion reflects actions already taken by NCUA to address credit unions compliance and regulatory costs and to update and improve to its regulations. Several additional, related initiatives are under active consideration by the NCUA Board and are likely to be implemented within the relatively near term. Each of these proposed program or regulatory changes is discussed below.

Possible Temporary Corporate Credit Union Stabilization Fund Proposal for Early Termination

Congress authorized the creation of the Temporary Corporate Credit Union Stabilization Fund in 2009.[48] The availability of this Fund allowed the agency to respond to the insolvency and failure of five large corporate credit unions without immediate depletion of the share insurance fund, which protects the deposits and savings of credit union members. This Fund also enabled the agency to fund massive liquidation expenses and guarantees on notes sold to investors backed by the distressed assets of the five failed corporate credit unions. Current projections are that the distressed assets underlying the notes will perform better than initially expected. In addition to improved asset performance, significant recoveries on legal claims have created a surplus that may eventually be returned to insured credit unions. NCUA intends to explore ways to speed up this process, principally by closing

[47] In contrast to the agencies, NCUA's rule contains no distinction, with respect to the appraisal requirement, between commercial loans for which either sales of real estate parcels or rental income derived from the property is the primary basis for repayment of the loan, and loans for which income generated by the business itself is the primary repayment source. Under 12 CFR part 722, the dollar threshold for either type of commercial loan is $250,000; loans above that amount must be supported by an appraisal performed by a state certified appraiser. By contrast, the banking agencies' rule creates a separate category for the latter type of commercial loan and establishes a threshold of $1 million; loans in this category but below that threshold do not require an appraisal.

[48] Public Law 111–22 (May 20, 2009), section 204(f).

the Fund and transferring its remaining assets to the share insurance fund more quickly than initially anticipated. Doing so would bolster the equity ratio of the share insurance fund, leading eventually to a potential distribution of funds in excess of the insurance fund's established equity ratio to the credit union industry.

Call Report Enhancements

NCUA intends to conduct a comprehensive review of the process by which it conducts its off-site monitoring of credit unions, namely through the Form 5300 Call Report and Profile. As the data reflected in these reports affect virtually all of NCUA's major systems, the agency's exploration of changes in the content of the Call Report and Profile will be on the front end of NCUA's recently announced Enterprise Solutions Modernization initiative, which will be a multi-year process taking place in stages. As started in the summer of 2016, this effort is comprehensive, ranging from the content of the Call Report and Profile to the systems that collect and use these data such as CU Online and the Automated Integrated Regulatory Examination System, or AIRES. Throughout the process, we will seek input from external stakeholders to ensure our overarching goals are met.

The imperative driving this modernization effort is, quite simply, that credit unions—like other depository institutions—are growing larger and more complex every day. At the same time, smaller credit unions face significant competitive challenges. In such an environment, it is incumbent on NCUA to ensure its reporting and data systems produce the information needed to properly monitor and supervise risk at federally insured credit unions while leveraging the latest technology to ease the burden of examinations and reporting on supervised institutions. For these reasons, three of the other FFIEC agencies—the FDIC, OCC, and Federal Reserve—are currently reviewing their Call Report forms with an eye to reducing reporting burden.

NCUA's goals in reviewing its data collection are:

- enhancing the value of data collected in pre-exam planning and off-site monitoring;
- improving the experience of users;
- protecting the security of the data collected; and
- minimizing the reporting burden for credit unions.

NCUA will review all aspects of data collection for federally insured credit unions. This review will go beyond reviewing the content of the Call Report and Profile, to look at the systems credit unions use to submit data to NCUA—namely CU Online.

The agency has already conducted a broad canvassing of internal and external stakeholders to obtain their feedback on potential improvements in the Call Report and Profile. We have attempted to engage all these stakeholders through a variety of methods, including a request for information published in the **Federal Register** with a 60-day comment period.[49] The comment period was intended to provide all interested parties an opportunity to provide input very early in the process. We also developed a structured focus group process to aid in assessing ideas (to complement internal NCUA and state regulatory agency input), and we have created data-collection systems that can be used to activate the focus group.

Supplemental Capital

NCUA plans to explore ways to permit credit unions that do not have a low-income designation to issue subordinated debt instruments to investors that would count as capital against the credit union's risk-based net worth requirements. At present, only credit unions having a low-income designation are allowed to issue secondary capital instruments that count against their mandatory leverage ratios. For credit unions that are not so designated by NCUA, only retained earnings may be used to meet the leverage requirements in the Federal Credit Union Act.[50] Consistent with its regulatory review objectives, NCUA issued an advance notice of proposed rulemaking to inform possible rulemaking that will describe certain constraints that, if applied to subordinated debt instruments issued by the credit union, will enable the credit union to count those instruments as capital for purposes of the risk-based capital rule.

Risk Based Capital

NCUA intends to revisit its recently finalized risk-based capital rule [51] in its entirety and to consider whether significant revision or repeal of the rule is warranted.

Examination Flexibility

In response to the financial crisis and the Great Recession that ensued thereafter, NCUA determined in 2009 to shorten its examination cycle to 12 months.[52] The agency also hired dozens of new examiners at that time. Since then, the agency policy has been that every federal credit union, and every state-chartered, federally insured credit union with assets over $250 million, should undergo an examination at least once per calendar year.

In an effort to implement regulatory relief and to address some inefficiencies associated with the current program, the agency has undertaken a comprehensive review of all issues associated with examiner time spent onsite at credit unions, including both frequency and duration of examinations. The relatively strong health of the credit union industry at present supports addressing exam efficiencies. A working group within the agency was established, and it solicited input from the various stakeholders with interests in this issue, including from within the agency, state regulatory authorities, and credit union representatives. The working group issued recommendations, which the Board incorporated into the agency's upcoming 2017–18 budget. These included the recommendation that the agency provide greater flexibility in scheduling exams of well-managed and well-capitalized credit unions, consistent with the practices of other federal financial regulators and the agency's responsibility to protect the safety and soundness of the share insurance fund. Other objectives for consideration include evaluating the feasibility of incorporating a virtual examination approach, as well as improvements to examiner training and a movement away from undue reliance on ''best practices'' that are unsupported by statute or regulation. In addition, the agency intends to revisit its recently enacted rule on stress testing for the largest credit unions to consider whether it is properly calibrated, and also to explore whether to move this important function in-house and out of the realm of expensive third-party contractors. The ultimate goal of NCUA's examination review and other initiatives has been and remains that safety and soundness will be assured with minimal disruptive impact on the well managed credit unions subject to examination.

Enterprise Solutions Modernization

NCUA's Enterprise Solutions Modernization program is a multi-year effort to introduce emerging and secure technology that supports the agency's examination, data collection and reporting efforts in a cost effective and efficient way. The changes in our technology and other systems will improve the efficiency of the examination process and lessen, where possible, examination burdens on credit unions, including cost and other concerns identified during our EGRPRA review.

Over the course of the next few years, the program will deploy new systems and technology in the following areas:

- *Examination and Supervision*—Replace the existing legacy examination system and related supporting systems, like the Automated Integrated Regulatory Examination System or AIRES, with modernized tools allowing examiners and supervisors to be more efficient, consistent, and effective.
- *Data Collection and Sharing*—Define requirements for a common platform to securely collect and share financial and non-financial data including the Call Report, Credit Union Profile data, field of membership, charter, diversity and inclusion levels, loan and share data, and secure file transfer portal.
- *Enterprise Data Reporting*—Implement business intelligence tools and establish a data warehouse to enhance our analytics and provide more robust data reporting.

Additionally, NCUA envisions introducing new or improved processes and technology to improve its workflow management, resource and time management, data integration and analytics, document management, and customer relationship management. Consistent with this vision, NCUA intends to consider ways to more transparently streamline its budget and align its priorities with its budget expenditures.

[49] 81 FR 36,600 (June 7, 2016).

[50] 12 U.S.C. 1790d(o)(2); see Legislative Recommendations, *infra*, for additional discussion about this requirement and NCUA's support for amending this provision.

[51] 12 CFR part 702, subpart A.

[52] Although the exam cycle immediately prior to 2009 had been in the 18-month range, for most of its history NCUA has followed an exam cycle of approximately one year.

Outreach and Coordination with Other Government Offices

Credit unions are affected by regulations and guidance issued by entities other than NCUA, at both the state and the federal level. In some cases, an appreciation of the unique aspects of credit unions, including their cooperative structure and not-for-profit orientation, may be lacking. NCUA can and should work with such entities to help assure that these unique aspects are not overlooked, both in the development and the application of rules and policies. At the state level in particular, NCUA intends to work more closely with state credit union regulators to enhance and preserve the dual chartering system, which has served the industry well for many years. Efficiencies in the joint examination process can also be improved.

Additional Areas of Focus

Several other areas present opportunities for NCUA to focus on improving and enhancing its body of regulations and its oversight of the industry it oversees. These include:

- *Appeals procedures.* At present, the procedures by which a credit union or other entity aggrieved by a determination by an examiner or other agency office may seek redress at the level of the NCUA Board are inconsistent and poorly understood. The agency intends to develop uniform rules to govern this area, both with respect to material supervisory determinations and other significant issues warranting the review by the Board.
- *Corporate rule (Part 704).* Reform and stringent control over the corporate credit union sector was necessary during the financial crisis that began in 2008. Nine years later, a reconsideration of the corporate rule and an evaluation of whether restrictions therein may be loosened is altogether appropriate.
- *Credit Union Advisory Council.* Development of such a Council would enable the agency to listen to and learn from industry representatives more directly, enhancing our efforts to identify and eliminate unnecessarily burdensome, expensive, or outdated regulations.

VI. Legislative Recommendations

NCUA is very appreciative of the efforts in Congress during recent years to provide regulatory relief by passing such laws as the Credit Union Share Insurance Fund Parity Act and the American Savings Promotion Act in the 113th Congress. The agency also appreciates recent efforts to enact into law provisions modifying the annual consumer privacy notifications found in the Gramm-Leach-Bliley Act.

In terms of issues that are ripe for congressional review and consideration, NCUA's most recent testimony before the Senate Banking and House Financial Services committees included recommendations regarding regulatory flexibility, raising statutory limits on member business lending for federally insured credit unions, providing supplemental capital authority for leverage ratio purposes to credit unions without the low-income designation, and revisiting field-of-membership requirements for federal credit unions. Each topic is discussed more fully below.

Regulatory Flexibility

Today, there is considerable diversity in scale and business models among financial institutions. Many credit unions are very small and operate on extremely thin margins. They are challenged by unregulated or less-regulated competitors, as well as limited economies of scale. They often provide services to their members out of a commitment to offer a specific product or service, rather than a focus on any incremental financial gain.

The Federal Credit Union Act contains a number of provisions that limit NCUA's ability to revise regulations and provide relief to such credit unions. Examples include limitations on the eligibility for credit unions to obtain supplemental capital, field-of-membership restrictions, curbs on investments in asset-backed securities, and the 15-year loan maturity limit, among others. To that end, NCUA encourages Congress to consider, consistent with maintaining safety and soundness, providing regulators like NCUA with flexibility to write rules to address the needs of smaller credit unions that pose little risk, rather than imposing rigid requirements on them. Such flexibility would allow the agency to effectively limit additional regulatory burdens, consistent with safety and soundness.

NCUA continues to modernize existing regulations with an eye toward balancing requirements appropriately with the relatively lower levels of risk smaller credit unions pose to the credit union system. By allowing NCUA discretion to scale and time the implementing of new requirements, we could mitigate the cost and administrative burdens of these smaller institutions while balancing consumer and prudential priorities.

We also would like to work with Congress so that all our rules going forward could be tailored to fit the risk presented and even the largest credit unions could achieve regulatory relief if their operations are well managed, consistent with legal requirements.

Member Business Lending

NCUA reiterates the agency's long-standing support for legislation to adjust the member business lending cap, such as H.R. 1188, the Credit Union Small Business Jobs Creation Act, introduced by Congressmen Royce and Meeks, or the Senate companion bill, S. 2028, the Small Business Lending Enhancement Act, introduced by Senators Paul, Whitehouse, and Reed. As introduced in the 114th Congress, these bipartisan bills contain appropriate safeguards to ensure NCUA can protect safety and soundness as qualified credit unions gradually increase member business lending.

For federally insured credit unions, the Federal Credit Union Act currently limits member business loans to the lesser of 1.75 times the level of net worth required to be well-capitalized or 1.75 times actual net worth, unless the credit union qualifies for a statutory exemption.[53] For smaller credit unions with the membership demand and the desire to serve the business segments of their fields of membership, the restriction makes it very difficult or impossible to successfully build a sound member business lending program. As a result, many credit unions are unable to deliver business lending services cost effectively, which denies small businesses in their communities access to an affordable source of credit and working capital.

These credit unions miss an opportunity to support the small business community and to provide a service alternative to the small business borrower. Small businesses are an important contributor to the local economy as providers of employment, and as users and producers of goods and services. NCUA believes credit union members that are small business owners should have full access to financial resources in the community, including credit unions, but this is often inhibited by the statutory cap on member business loans.

NCUA additionally supports H.R. 1422, the Credit Union Residential Loan Parity Act, introduced by Congressman Royce and the Senate companion bill, S. 1440, which Senator Wyden introduced. As introduced in the 114th Congress, these bills address a statutory disparity in the treatment of certain residential loans made by credit unions and banks. When a bank makes a loan to purchase a 1- to 4-unit, non-owner-occupied residential dwelling, the loan is classified as a residential real estate loan. If a credit union were to make the same loan, it is classified as a member business loan; therefore, it is subject to the member business lending cap. To provide parity between credit unions and banks for this product, H.R. 1422 and S. 1440 would exclude such loans from the member business loan cap. The legislation also contains appropriate safeguards to ensure NCUA will apply strict underwriting and servicing standards for these loans.

Supplemental Capital

A third area in which congressional action is warranted involves legislation that would allow more credit unions to access supplemental capital, such as H.R. 989, the Capital Access for Small Businesses and Jobs Act. Introduced by Congressmen King and Sherman in the House in the 114th Congress, this bipartisan bill would allow healthy and well-managed credit unions to issue supplemental capital that will count as net worth, to meet statutory requirements. This legislation would result in a new layer of capital, in addition to retained earnings, to absorb losses at credit unions.

The high-quality capital that underpins the credit union system is a bulwark of its strength and key to its resiliency during the recent financial crisis. However, most federal credit unions only have one way to raise capital—through retained earnings, which can grow only as quickly as earnings. Thus, fast-growing, financially strong, well-capitalized credit unions may be discouraged from allowing healthy growth out of concern it will dilute their net worth ratios and could trigger mandatory prompt corrective action-related supervisory actions.

A credit union's inability to raise capital outside of retained earnings limits its ability

[53] 12 U.S.C. 1757a.

to grow its field of membership and to offer greater options to eligible consumers and small businesses. In light of these concerns, NCUA encourages Congress to authorize healthy and well-managed credit unions to issue supplemental capital that will count as net worth under conditions determined by the NCUA Board. Enactment of H.R. 989 would lead to a stronger capital base for credit unions and greater protection for taxpayers.

Field-of-Membership Requirements

The Federal Credit Union Act currently permits only federal credit unions with multiple common-bond charters to add underserved areas to their fields of membership. We recommend Congress modify the Federal Credit Union Act to give NCUA the authority to streamline field-of-membership changes and permit all federal credit unions to grow their membership by adding underserved areas. H.R. 5541, the Financial Services for the Underserved Act, introduced in the House during the 114th Congress by Congressman Ryan of Ohio, would accomplish this objective.

Allowing federal credit unions with a community or single common-bond charter the opportunity to add underserved areas would open up access for many more unbanked and underbanked households to credit union membership. This legislative change also could eventually enable more credit unions to participate in the programs offered through the congressionally established Community Development Financial Institutions Fund, thus increasing the availability of credit and savings options in distressed areas.

Congress also may want to consider other field-of-membership statutory reforms. For example, Congress could allow federal credit unions to serve underserved areas without also requiring those areas to be local communities. Additionally, Congress could simplify the ''facilities'' test for determining if an area is underserved.[54] Other possible legislative enhancements could include elimination of the provision presently contained in the Federal Credit Union Act that requires a multiple common bond credit union to be within ''reasonable proximity'' to the location of a group in order to provide services to members of that group.[55] Another legislative enhancement that recognizes the way in which people share common bonds today would be to provide for explicit authority for web-based virtual communities as a basis for a credit union charter. NCUA stands ready to work with Congress on these ideas, as well as other options to provide consumers more access to affordable financial services through credit unions.

VII. Conclusion

Going forward, NCUA will continue its efforts to provide regulatory relief to credit unions through processes like the EGRPRA review and other methods available to it. As the financial services industry and credit union risk landscape evolves, it is important that NCUA smartly adapt. The agency must commensurately and continually improve its current processes to operate efficiently and effectively.

As the government-backed insurer for the credit union system and the regulator of federally chartered credit unions, the agency faces a number of challenges similar to the ones credit unions wrestle with, such as the need to:

- improve our operations and processes to become more responsive to credit union (member) requests, while keeping costs down;
- optimize our use of existing and new technology as a tool, enabling us to do our jobs better; and
- conduct future credit union exams in ways that minimize any disruptive operational impacts on the credit unions we visit.

As discussed above, revising the data NCUA collects by the Call Report and Profile is only the first concrete step in a much broader and longer-term retooling of how NCUA approaches its role in the credit union system. NCUA has an opportunity now to lay the foundation for a transformation of how the agency conducts business going forward, especially in terms of the Enterprise Solutions Modernization initiative and the continuous quality improvement work group the agency will be using for the examination process.

Such efforts should lead to improvements in NCUA's effectiveness, efficiency gains for NCUA and credit unions, and a better experience for credit unions in interacting with NCUA. As NCUA works to implement reforms to the agency's processes and procedures, we will continue efforts to provide regulatory relief to credit unions, consistent with safety and soundness and the requirements of the Federal Credit Union Act.

Ultimately, our goal remains to be a responsive agency that strikes the correct balance between prudential safety-and-soundness oversight and right-sized regulations that address problems appropriately while enabling the credit unions we regulate to provide important financial choices to meet the growing and evolving financial needs of consumers, small businesses and communities as vibrant components of the U. S. financial sector.

VIII. Appendices

1. Chart of Agency Regulations by Category
2. Notices Requesting Public EGRPRA Comment on Agency Rules
3. Regulatory Relief Initiative—Summary Chart

APPENDIX 1—CHART OF AGENCY REGULATIONS BY CATEGORY

Category	Subject	Regulation cite
1. Applications and Reporting	Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition.	12 CFR 701.14.
	Field of membership/chartering	12 CFR 701.1; IRPS 03–1, as amended.
	Federal Credit Union Bylaws	12 CFR 701.2; Appendix A to Part 701.
	Fees paid by federal credit unions	12 CFR 701.6.
	Conversion of insured credit unions to mutual savings banks	12 CFR part 708a.
	Mergers of federally insured credit unions; voluntary termination or conversion of insured status.	12 CFR part 708b.
	Applications for insurance	12 CFR 741.0; 741.3; 741.4.
	Financial, statistical and other reports	12 CFR 741.6.
	Conversion to a state-chartered credit union	12 CFR 741.7.
	Purchase of assets and assumption of liabilities	12 CFR 741.8.
2. Powers and Activities:		
a. Lending, Leasing and Borrowing	Loans to members and lines of credit to members	12 CFR 701.21.
	Participation loans	12 CFR 701.22.
	Borrowed funds from natural persons	12 CFR 701.38.
	Statutory lien	12 CFR 701.39.
	Leasing	12 CFR part 714.
	Member business loans	12 CFR part 723.
	Maximum borrowing	12 CFR 741.2.
b. Investment and Deposits	Investment and deposit activities	12 CFR part 703.
	Fixed assets	12 CFR 701.36.

[54] The Federal Credit Union Act presently requires an area to be underserved by other depository institutions, based on data collected by NCUA or federal banking agencies. NCUA has implemented this provision by requiring a facilities test to determine the relative availability of insured depository institutions within a certain area. Congress could instead allow NCUA to use alternative methods to evaluate whether an area is underserved to show that although a financial institution may have a presence in a community, it is not qualitatively meeting the needs of an economically distressed population.

[55] *See* 12 U.S.C. 1759(f)(1).

APPENDIX 1—CHART OF AGENCY REGULATIONS BY CATEGORY—Continued

Category	Subject	Regulation cite
	Credit union service organizations (CUSOs)	12 CFR part 712.
	Payment on shares by public units and nonmembers	12 CFR 701.32.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
	Share, share draft, and share certificate accounts	12 CFR 701.35.
	Treasury tax and loan depositories; depositories and financial agents of the government.	12 CFR 701.37.
	Refund of interest	12 CFR 701.24.
	Trustee or custodian, tax-advantaged plans	12 CFR part 724.
c. Miscellaneous Activities	Incidental powers	12 CFR part 721.
	Charitable contributions and donations, including charitable donation accounts	12 CFR 721.3(b).
	Credit union service contracts	12 CFR 701.26.
	Purchase, sale, and pledge of eligible obligations	12 CFR 701.23.
	Services for nonmembers within the field of membership	12 CFR 701.30.
	Suretyship and guaranty	12 CFR 701.20.
	Foreign branching	12 CFR 741.11.
3. Agency Programs	Community Development Revolving Loan Program	12 CFR part 705.
	Central liquidity facility	12 CFR part 725.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
4. Capital	Prompt corrective action	12 CFR part 702.
	Adequacy of reserves	12 CFR 741.3(a).
5. Consumer Protection	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31.
	Truth in Savings (TIS)	12 CFR part 707.
	Appraisals for higher priced mortgage loans	12 CFR 722.3(f).
	Loans in areas having special flood hazards	12 CFR part 760.
	Fair Credit Reporting—identity theft red flags	12 CFR part 717, Subpart J.
	Fair Credit Reporting—disposal of consumer information	12 CFR 717.83.
	Fair Credit Reporting—duties regarding address discrepancies	12 CFR 717.82.
	Share insurance	12 CFR part 745.
	Advertising	12 CFR part 740.
	Disclosure of share insurance	12 CFR 741.10.
	Notice of termination of excess insurance coverage	12 CFR 741.5.
	Uninsured membership shares	12 CFR 741.9.
	Member inspection of credit union books, records, and minutes	12 CFR 701.3.
6. Corporate Credit Unions	Corporate credit unions	12 CFR part 704.
7. Directors, Officers, and Employees	Loans and lines of credit to officials	12 CFR 701.21(d).
	Reimbursement, insurance, and indemnification of officials and employees	12 CFR 701.33
	Retirement benefits for employees	12 CFR 701.19.
	Management officials interlock	12 CFR part 711.
	Fidelity bond and insurance coverage	12 CFR part 713.
	General authorities and duties of federal credit union directors	12 CFR 701.4.
	Golden parachutes and indemnification payments	12 CFR part 750.
8. Money Laundering	Report of crimes or suspected crimes	12 CFR 748.1.
	Bank Secrecy Act	12 CFR 748.2.
9. Rules of Procedure	Liquidation (involuntary and voluntary)	12 CFR parts 709 and 710.
	Uniform rules of practice and procedure	12 CFR part 747, subpart A.
	Local rules of practice and procedure	12 CFR part 747, subparts B through J.
	Inflation adjustment of civil money penalties	12 CFR part 747, subpart K.
	Issuance, review and enforcement of orders imposing prompt corrective action	12 CFR part 747, subparts L and M.
10. Safety and Soundness	Lending	12 CFR 701.21.
	Investments	12 CFR part 703.
	Supervisory committee audit	12 CFR part 715.
	Security programs	12 CFR 748.0.
	Guidelines for safeguarding member information and responding to unauthorized access to member information.	12 CFR part 748, Appendices A and B.
	Records preservation program and record retention appendix	12 CFR part 749.
	Appraisals	12 CFR part 722.
	Examination	12 CFR 741.1.
	Liquidity and contingency funding plans	12 CFR 741.12.
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions.	12 CFR part 741, subpart B.

Appendix 2: Notices Requesting Public EGRPRA Comment on Agency Rules (four)

NATIONAL CREDIT UNION ADMINISTRATION

(1) 79 FR 32191 (June 4, 2014) [1]
Notice of regulatory review; request for comments.

(2) 79 FR 75763 (December 19, 2014) [2]
Notice of regulatory review; request for comments.

(3) 80 FR 36252 (June 24, 2015) [3]
Notice of regulatory review; request for comments.

(4) 80 FR 79953 (December 23, 2015) [4]
Notice of regulatory review; request for comments.

[1] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12739.pdf.*

[2] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-29629.pdf.*

[3] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-06-24/pdf/2015-15472.pdf.*

[4] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32167.pdf.*

APPENDIX 3—REGULATORY RELIEF INITIATIVE

[Results 2011–2016]

Improved rules	Benefits
Expanded Regulatory Relief Eligibility for Small and Non-Complex Credit Unions.	• Expanded NCUA's regulatory exemptions for credit unions with assets of less than $100 million *(up from $10 million in 2012).* • Eased compliance requirements for small credit unions to access emergency liquidity. • More than doubled the number of small credit unions eligible for regulatory relief in future NCUA rulemakings *(4,500 out of 6,000 credit unions).* • Exempted non-complex credit unions *(75 percent of all credit unions)* from risk-based capital requirements.
Eliminated Fixed Assets Cap	• Eliminated federal credit unions' 5 percent cap on fixed assets. • Removed the need to apply for regulatory waivers. • Empowering federal credit unions to make their own business decisions on purchases of land, buildings, office equipment and technology.
Pre-Approved Associational Common Bonds	• Pre-approved 12 categories of associations that federal credit unions may automatically add to their fields of membership.
Expanding Fields of Membership	• Proposed a modernized field of membership rule to: ○ Designate each Congressional District as a well-defined local community. ○ Serve Combined Statistical Areas with populations up to 2.5 million. ○ Raise potential membership to 1 million for federal credit unions in rural areas. ○ Extend membership eligibility to honorary discharged veterans, contractors and businesses in industrial parks. ○ Recognize full-service websites and electronic applications as service facilities for select employee groups. ○ Modernize the definition of ''underserved area''.
Modernized Member Business Lending	• Finalized a principles-based rule on member business lending to: ○ Remove non-statutory limits on member business loans. ○ Empower each credit union to write their own business loan policy and set their own limits under the law. ○ Eliminate the requirement for all business owners to pledge personal guarantees. ○ Remove unnecessary barriers on business loan participations, which help credit unions diversify risks.
Eased Troubled Debt Restructuring	• Facilitated credit union loan modifications. • Ended manual reporting of modified loans. • Prevented unnecessary foreclosures. • Kept more credit union members in their homes throughout the housing crisis.
Authorized ''Plain Vanilla'' Derivatives	• Permits qualified federal credit unions to use ''plain vanilla'' derivatives to reduce interest rate risks. • Protects the credit union system from interest rate risks at large credit unions by providing an additional interest rate risk mitigation tool. • Allows approved federal credit unions to maintain appropriate levels of mortgage loans in portfolios.
Approved Treasury Inflation-Protected Securities	• Offers federal credit unions an additional investment backed by the full faith and credit of the United States with zero credit risk.
Established Charitable Donation Accounts	• Empowers federal credit unions to safely pool investments designed to primarily benefit national, state, or local charities.
Eliminating Full Occupancy Requirement	• Proposed eliminating a requirement that federal credit unions must plan for and eventually reach full occupancy of acquired premises.

Streamlined processes	Benefits
''Opt-In'' Low-Income Credit Union Designation	• Implemented an ''opt-in'' notification process whereby eligible credit unions can simply reply ''Yes'' to receive their low-income designation. • Doubled the number of low-income designations in three years, reaching 2,300 credit unions serving 30 million members.
Enhanced Attractiveness of Secondary Capital	• Provided policy flexibility for Low-Income Credit Unions to redeem secondary capital when investors request.
Expedited Examinations for Smallest Credit Unions	• Created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2 or 3 and assets up to $50 million. • Focused expedited exams on issues most likely to pose risks to the smallest credit unions.
Referring Member Complaints	• Referring member complaints directly to federal credit unions. • Providing supervisory committees with 60 days to resolve each complaint before NCUA intervenes.

APPENDIX 3—REGULATORY RELIEF INITIATIVE—Continued

[Results 2011–2016]

Streamlined processes	Benefits
Approving Fields of Membership	• Provided a 5-page template for community charter applications rather than requiring hundreds of pages of community documentation. • Upgraded NCUA's technology platform to allow credit unions applying to expand their fields of membership to track the status of their applications online throughout the approval process.
Certifying Credit Unions as Community Development Financial Institutions.	• Signed agreement with US Treasury to double the number of credit unions certified as Community Development Financial Institutions by January 2017. • Automating existing NCUA data to pre-qualify low-income credit unions as certified CDFIs eligible for multi-million-dollar grants from Treasury's CDFI Fund.
Cutting Reporting Burdens	• Beginning with the September 30, 2016 Call Report, credit unions will only be required to submit aggregate loan and investment information about credit union service organizations.
Clarified Legal Opinions	**Benefits**
Authorized Network Credit Union Model	• Creates a cooperative structure where small credit unions can merge without losing their identity or member services flexibility.
Extended Loan Maturities	• Permits loan maturities up to 40 years after loan modifications. • Significantly reduces monthly payments for borrowers in need.
Permitted Indirect Loan Participations	• Allows credit unions to sell portions of indirect loans to raise liquidity. • Provides buyers another option to diversify loan portfolios.
Expanded Vehicle Fleets	• Expanded "fleets" from two to five vehicles for member business loans. • Increases access to credit for small businesses and startups.
Modernized Service Facilities	• Includes full-service video tellers in the definition of federal credit union "service facilities". • Empowers federal credit unions to expand services in underserved areas.
Changing Charters in Mergers	• Permits credit unions to change charters to facilitate voluntary mergers. • Enhances credit union services for members of merging credit unions.

Federal Financial Institutions Examination Council.

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