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Community Bank Guide to Preparing EGRPRA Statement and Comments

Summary

As part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), the three banking agencies (i.e., the FDIC, Federal Reserve and the OCC, but not the CPFB) are reviewing their regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies. EGRPRA gives ICBA and community banks an opportunity to articulate our serious concerns with regulatory burden and how it is adversely impacting the ability of community banks to serve their communities.

ICBA has prepared this guide to assist community bankers who want to comment in writing (**comments due October 30**) about the burden of regulations, or who are registered to speak at the first EGRPRA virtual meeting on September 25 (registration is now closed). Future virtual meetings are expected and will be announced when made public.

The banking agencies have divided their regulations into twelve categories and are seeking comments on the first six categories at the September 25th virtual hearing. Those categories include: (1) Applications and Reporting, 2) Powers and Activities, 3) International Operations, 4) Consumer Protection, 5) Directors, Officers, and Employees, and 6) Money Laundering. Below are some suggested issues that community banks may want to comment on regarding these six categories as well as ICBA's position concerning the issue.

Regulatory Issues for Community Banks to Consider

1. Call Report Simplification

Community bankers may want to comment on the regulatory burden and expense of having to prepare a quarterly call report including the outside expenses of third party and/or core service provider services. Other than being a required regulatory filing, they may also want to comment on whether the call report information is really that useful to the bank.

In 2019, in response to the mandate of Section 205 of S. 2155, the Federal Financial Institution Examination Council (FFIEC) implemented a short form community bank call report, the FFIEC 051 reporting form, that included the elimination of certain reporting elements. While the FFIEC 051 did technically eliminate 37% of the data items required to be reported by the longer form FFIEC 041, unfortunately, those data items that were eliminated did not apply to most community banks. Consequently, the regulatory relief for community banks was not significant.

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ICBA Position on Call Report Simplification: The short form FFIEC 051 needs to be significantly streamlined. Highly rated and well-capitalized community banks should file (1) a short-form call report for the first and third quarters of each calendar year and (2) a more complete call report at mid-year and year end. The short-form call report should only include the income statement, balance sheet, and statement of changes in shareholders' equity, which provides the information needed by regulators to provide prudent oversight over such short reporting intervals. While the full call report should include more information than the short-form report, it should be much more streamlined than the FFIEC 051. Additionally, "covered institutions" (or those institutions that are eligible to file the short-form report) should include insured depository institutions that have less than $10,000,000,000 in total consolidated assets.

2. Bank Merger Act

Community bankers may also want to comment on how time-consuming and burdensome the merger process is under the Bank Merger Act. In some instances, community bank mergers can take over a year to get a regulatory decision. Community bankers may also want to comment on how easy it is for credit unions to acquire banks and how difficult it is for a community bank to acquire a credit union.

ICBA Position Regarding the Bank Merger Act: The FDIC should amend its bank merger framework to ensure mergers among the smallest community banks can transact with speed and regulatory scrutiny that is proportionate to their small size, relative non-complexity, and lack of systemic risk. ICBA urges the FDIC to create a small bank de minimis exception to its bank merger framework to expedite agency review of mergers among small banks and reduce associated transaction costs and burden. Under this exception, the FDIC should streamline its review of small bank mergers by subjecting these transactions to shorter agency review periods and adopting a presumption that these transactions do not create monopolies or anticompetitive effects.

The Agencies also request comments on whether any of the regulations in these categories create competitive disadvantages for one part of the financial services industry compared to another. In the merger area, community banks are at a competitive disadvantage because credit unions can leverage their tax-exempt status to outbid them. Consequently, larger, out of market credit unions are displacing smaller, locally based community banks creating an environment that is less competitive, has more systemic risk, and offers fewer choices for consumers and small businesses. So far this year, more than a quarter of all bank acquisitions were from tax-exempt credit unions and it looks like the pace of credit union acquisitions of banks will increase.

It is not just their tax-exempt status that gives credit unions a competitive advantage over community banks. Because they are not subject to the Community Reinvestment Act, they do not have to be concerned with the CRA impact from an acquisition which gives them more flexibility with regard to the banks they acquire and simplifies the whole regulatory process. Community banks report that credit unions are inflating the purchase price of community banks and are consistently outbidding them whenever there is a bidding contest. Unfortunately, because of the legal roadblocks created by the National Credit Union Administration, it is almost impossible for a community bank to acquire a credit union which explains why there are few acquisitions of credit unions by banks.

3. De Novo Bank Applications

De novo community banks and/or those that have recently gone through the de novo bank process may want to comment on how lengthy and complicated the process is. The number of de novo applicants remains so low particularly in comparison to twenty years ago that one must conclude that some of the problem must be due to the application process. Furthermore, the capital requirements for a newly formed bank are so high that they are almost an insurmountable obstacle for most applicants.

ICBA Position on De Novo Bank Applications: Given the dearth of de novo bank applications, ICBA urges the FDIC to streamline the application process further and consider innovative ways to encourage applicants. For instance, the initial application process could be simplified and completed over the internet with guidance from the FDIC. This way, applicants could complete the application process without having to hire legal specialists or consultants.

ICBA recommends a phase-in of capital requirements so that, for instance, a de novo bank would only be required to have 6 percent capital on day 1, 7 percent at the beginning of the second year, and 8 percent at the beginning of the third year. This would give the community bank extra time to meet current, strenuous capital requirements. ICBA also advocates for more tax benefits for de novo banks.

4. Small Bank Holding Company Policy Statement

Community bank holding companies may want to comment on raising the $3 billion threshold so that additional banking holding companies could be subject to lower capital requirements.

ICBA Position on the Small Bank Holding Company Policy Statement: ICBA strongly believes that the asset threshold under the Policy Statement should be raised to $10 billion in assets. In addition, we recommend that the debt-to-equity ratio threshold of 1:1 be increased to 2:1. Increasing the exemption to $10 billion would reduce the regulatory burden on many community banks and would improve their ability to sell their stock locally, keeping the financial decisions affecting the community in the local area.

5. Federal Reserve Regulation O

Community bankers may want to comment on how complicated and confusing it is to comply with Regulation O. Officers and directors of banks often find the rules bewildering and difficult to comply with.

ICBA's Position on Regulation O: The rules on prior approval of extensions of credit, on additional restrictions on loans to executive officers, and the definition of what is an "extension of credit" need to be clarified and simplified. Furthermore, it is time to revisit some of the loan limits. For instance, the $100,000 aggregate credit limit to an executive officer in Section 215.5 should be raised to $250,000 to reflect the changes to the costs of living since the regulation was enacted.

ICBA suggests also easing some of the requirements for community banks with CAMELS composite ratings of "1" or "2" and management ratings of not lower than "2." The agencies should issue a Regulation O summary chart to capture the limitations on loans to various types of insiders in an easy comprehensive way, with cross references to Federal Reserve Regulation W.

6. Bank Secrecy Act ("BSA")

Community banks may want to use this opportunity to continue advocating for threshold adjustments for BSA reporting requirements, and against the requirement for banks to collect beneficial ownership information.

ICBA Position on BSA: BSA/AML requirements are outdated, and community banks doubt their effectiveness. ICBA supports statutory and regulatory changes that would make BSA/AML requirement more targeted, efficient, and effective. Community banks should be relieved from the collection of beneficial ownership information, since it is now collected by FinCEN at the time a legal entity is formed.

ICBA strongly recommends raising Currency Transaction Reporting (CTR) and Suspicious Activity Reporting (SAR) thresholds. The CTR threshold, which was set in 1970, should be raised from $10,000 to $30,000 with future increases linked to inflation. The current SARs threshold, set in 1992, should be raised from $5,000 to $10,000 which will modernize thresholds by emphasizing quality over quantity in information collection. SARs will have more value if they are appropriately risk-based. Today's outdated SAR and CTR thresholds promote over-filing and dilute their value to law enforcement. Higher thresholds will result in more valuable information and reduce community bank burden.

The agencies should continue to work with industry to reduce community banks' mounting costs and regulatory burdens.

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