



Commencement of Review of Regulations Under EGRPRA*

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The federal banking agencies have issued a notice that they would be commencing the review of regulations required under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGR-PRA”).¹ Comments will be due in 90 days, a fairly short time frame for commentators to assess all that will be reviewed in this process and then to articulate their assessments as directed in the notice. This is a review required at least once a decade under the statute and is designed to identify outdated, unnecessary, or unduly burdensome regulations for insured depository institutions.

The agencies have divided the regulations into 12 subject matter categories and have identified certain regulations within each category for consideration. The review will be a lengthy one, taking place over a two-year period, and will be divided into four separate notices published at regular intervals. Each notice will include a separate group of categories for review. If this first notice is a guide, each notice will include three different categories.

This program guarantees that banking regulations will be under review constantly during the next two years.

Categories under review in the first notice period

This request for comment will cover three categories: Applications and Reporting, Powers and Activities, and International Operations. For each of these categories, the agencies will seek comment on questions for each of the three:

- Is there a need for statutory change, and, if so, articulate suggested changes;
- Have the regulations become outdated or unnecessary, and, if so, suggest changes;
- Is there a better regulatory approach that could be substituted, and, if so, what;
- Do the regulations favor one group competitively, and, if so, how should they be changed;

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¹12 U.S.C. 3311.

- Do the requirements unduly burden the industry in recordkeeping, disclosures, or reporting, could electronic methods be more fully utilized; or
- Has there been regulatory creep beyond the statutory language?

To assist commenters, the agencies have prepared a chart that lists each of the three categories to be reviewed,² and further lists the subject matter to be covered, the types of institutions for each subject matter, and references to the Code of Federal Regulations.

If commenters make a point so effectively that the agencies conclude change should be considered, they will initiate a rulemaking to effect a change if the change can be made by rulemaking. The public will have the opportunity to comment on such proposals in regular order.

It is unclear what the agencies will do if the change requires legislative change, but the agencies have requested commenters to specifically consider the statutory mandate when commenting on the regulations. In addition, the relevant EGRPRA statute, 12 U.S.C. 3311, directs the agencies to report to Congress 30 days after they have completed their review, and notify Congress if the regulatory burdens they uncovered must be addressed by legislation.

As has been common in the past few years, the agencies say that they will focus considerable attention on how the burdens impact smaller institutions, and what suggestions commenters have to reduce those burdens consistent with statutory mandates.

The subject matters covered in this first notice are extensive and include such matters as applications under the Bank Merger Act; Change in Bank Control, OCC national bank rules, policies and procedures for corporate activities; bank holding company formations, acquisitions and nonbanking activities; and FDIC Call Reports. It includes powers and activities of national banks in all aspects of their businesses; Board of Governors regulations; and activities of state insured banks and savings associations. Finally, it includes matters relating to international operations found in banks or holding companies.

Categories to be considered in later notices

While the notice did not list the order for additional categories, the chart attached did number and list those categories. They are (1) Banking Operations; (2) Capital; (3) Community Reinvestment Act; (4) Consumer Protection (excludes CFPB jurisdiction); (5) Directors, Officers and Employees; (6) Money Laundering; (7) Rules of Procedure; (8) Safety and Soundness; and (9) Securities.

This is a broad scope of categories, but the statute says: "...each appropriate agency represented on the [FFIEC] shall conduct a review of all regulations prescribed by ...any such appropriate Federal banking agency... in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions." The scope is intended to be broad.

What to Expect From the Review

The agencies will, of course, review all comments and consider them carefully. Whether they will make a difference — i.e., whether there will be changes in the regulations — will depend upon a number of variables.

First, will the public, and, in particular, the industries affected, make a concerted effort to submit

²The charts also list the remaining 9 categories to be reviewed seriatim.

reasoned comments to the agencies? Many efforts have been made in the past to change regulations only to find that at the end of the day, no changes were made. That attitude may influence how energetic the industry will be in assembling their arguments and submitting comments this time.

Second, will the agencies be able to separate their biases and review the comments objectively? The agencies created the regulations that are being reviewed, and in doing so, considered comments from the public before deciding on the rules that now exist. Will staff in the agencies, many of whom were involved in the original determinations of what should be in the regulations, now be able to judge them in the light of a possible changed environment?

Third, is the suggested change an attempt to reconsider a regulation based on public policy grounds or is it one that addresses an unnecessary burden? In other words, is it an attempt simply to have a rehearing of arguments that have already been rejected? If the passage of time has demonstrated that an unnecessary burden exists, however, that rehearing may be very appropriate.

How recently was the rule adopted? While many complain about the Dodd-Frank rules, most of those have so recently been adopted that it is unlikely that regulators will believe things have changed enough to warrant reconsideration. At the same time, some of the rules have produced ambiguities, and this might be the place to raise questions surrounding those.

Finally, have regulations that create unnecessary burdens been so integrated into the complex systems of the banks that unwinding and changing them might produce more costs than simply continuing to use the existing, burdensome regulations?

The opportunity for banks to challenge burdensome regulations exists, however, and it is likely that there will be many suggestions submitted. Historically, the results of the first review under this section produced some modest changes, including a review of Basel II, SARS, consumer disclosures, and lending limits.

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