



Audit Report



OIG-18-039

FINANCIAL REGULATION AND OVERSIGHT

OCC Complied With Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996

February 22, 2018

Office of
Inspector General

Department of the Treasury

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Abbreviations

Board	Board of Governors of the Federal Reserve System
CFPB	Consumer Financial Protection Bureau
EGRPRA	Economic Growth and Regulatory Paperwork Reduction Act of 1996
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
LRA	Legislative and Regulatory Activities Division
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
SME	subject matter expert

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*The Department of the Treasury
Office of Inspector General*

February 22, 2018

Joseph M. Otting
Comptroller of the Currency
Office of the Comptroller of the Currency

This report presents the results of our audit of the Office of the Comptroller of the Currency's (OCC) process to review its regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).¹ Section 2222 of the EGRPRA requires that, not less than once every 10 years, certain members of the Federal Financial Institutions Examination Council (FFIEC)² conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. EGRPRA also directs the Board of Governors of the Federal Reserve System (Board), OCC, and Federal Deposit Insurance Corporation (FDIC) (collectively referred to as the federal banking agencies) to eliminate unnecessary regulations to the extent that such action is appropriate.

The federal banking agencies completed their first regulatory review under the EGRPRA in 2006. In July 2007, they issued a Joint Report to Congress³ describing the actions taken by the federal banking agencies to fulfill the EGRPRA's regulatory review requirements.

¹ Public Law 104-208, September 30, 1996

² FFIEC is an interagency body comprising OCC, the Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB), and the State Liaison Committee. Only OCC, the Board, and FDIC are statutorily required to undertake the EGRPRA review. CFPB is required to review its significant rules and publish its review, no later than 5 years after the rules take effect, in a process that is separate from the EGRPRA process. NCUA has voluntarily conducted a review of its own regulations concurrently with the timing of the review conducted by OCC, the Board, and FDIC.

³ Federal Financial Institutions Examination Council, *Joint Report to Congress, Economic Growth and Regulatory Paperwork Reduction Act*, July 31, 2007

The objective of our audit was to determine whether OCC's process to review its regulations conforms to the EGRPRA. To accomplish our objective, we reviewed OCC documentation and interviewed OCC, Board, and FDIC personnel involved in the EGRPRA review process. Appendix 1 contains a more detailed description of our audit objective, scope, and methodology.

In brief, we concluded that OCC complied with Section 2222 of the EGRPRA. We are not making any recommendations to OCC as a result of our audit. However, during the next EGRPRA regulatory review, OCC could enhance its documentation of the review process by developing a cross-walk between the public comments received and the comment summaries developed for each Federal Register Notice.

We provided a draft of this report to OCC management for its review. OCC reviewed the report and had no comments.

Background

Under EGRPRA, the FFIEC and the federal banking agencies are directed, not less frequently than once every 10 years, to conduct a review of their regulations in order to identify outdated or otherwise unnecessary regulatory requirements imposed on depository institutions. In conducting this review, the statute requires the FFIEC or the federal banking agencies to categorize their regulations by type (e.g., consumer, safety and soundness) and, at regular intervals, provide notice and solicit public comment on categories of regulations. Specifically, the EGRPRA requires the FFIEC and federal banking agencies to ask the public to identify areas of regulations that are outdated, unnecessary, or unduly burdensome.

EGRPRA also requires the (1) FFIEC or the federal banking agencies to publish in the Federal Register a summary of the comments received, identifying the significant issues raised by commenters and providing comment on these issues; (2) FFIEC or federal banking agencies to eliminate unnecessary regulations to the extent that such action is appropriate; and (3) FFIEC to submit a report to Congress 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 federal banking agencies are able to address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

For the second EGRPRA review, the federal banking agencies categorized their regulations by type. They grouped their combined regulations into 12 regulatory categories and jointly published them in the Federal Register in accordance with EGRPRA requirements. The following Federal Register Notices solicited public comments and requested that commenters identify outdated, unnecessary, or unduly burdensome regulations for each category:

- Notice 1 (June 4, 2014)⁴ on Applications and Reporting, Powers and Activities, and International Operations
- Notice 2 (February 13, 2015)⁵ on Banking Operations, Capital, and the Community Reinvestment Act
- Notice 3 (June 5, 2015)⁶ on Consumer Protection; Directors, Officers, and Employees; and Money Laundering
- Notice 4 (December 23, 2015)⁷ on Rules of Procedure, Safety and Soundness, and Securities

In addition to obtaining formal written comments for the above regulatory categories, the federal banking agencies hosted six public outreach meetings around the country from December 2014 through December 2015.⁸ These meetings were held to obtain direct input from bankers, consumer and community groups, and other interested parties on the most pressing regulatory burdens. Each meeting featured three panel discussions for bankers and one panel discussion for consumer and community groups. During the EGRPRA comment period, the federal banking agencies received

⁴ 79 FR 32172

⁵ 80 FR 7980

⁶ 80 FR 32046

⁷ 80 FR 79724 and 81 FR 1923

⁸ The meetings took place in Los Angeles, California; Dallas, Texas; Boston, Massachusetts; Kansas City, Missouri; Chicago, Illinois; and Washington, DC.

over 230 written comment letters⁹ and from the four Federal Register Notices.¹⁰

The Legislative and Regulatory Activities (LRA) Division serves as OCC's counsel on legislative and regulatory matters¹¹ and managed the EGRPRA review process, which included three phases: preparation, review, and reporting.

Preparation Phase

For the recent EGRPRA review process, LRA personnel drafted separate comment summaries¹² from the four Federal Register Notices and six outreach meetings. LRA personnel told us that they manually cross-checked the comment letters and outreach meeting comments against each comment summary. The LRA personnel also created charts, consolidated by regulatory categories, from comment summaries for OCC rules (from Federal Register Notices 1–4), for interagency rules (from Federal Register Notices 1–3), and for the six outreach meetings. Due to timing constraints, the LRA personnel changed their process to a narrative format for interagency rules from Federal Register Notice 4. LRA personnel sent the comment summary charts and narrative to OCC's subject matter experts (SMEs) for review.

⁹ For this EGRPRA review process, individuals submitted their comment letters through the Federal eRulemaking Portal, Regulations.gov; the EGRPRA, Board and FDIC websites; or during the six public outreach meetings. Additionally, comment letters could be hand delivered, emailed, mailed, or faxed (excluding FDIC) to the federal banking agencies.

¹⁰ The public EGRPRA comments were maintained at <https://www.regulations.gov>. Written comments to the Board and FDIC were forwarded to OCC to upload and post to the same website.

¹¹ LRA (1) develops and drafts OCC regulations and provides legal counsel for the agency's compliance with the various federal statutes and, where applicable, executive orders that govern the rulemaking process; (2) monitors pending legislation of significance to national banks, federal savings associations, or OCC and provides legal support for the agency's legislative work; (3) provides legal advice on international banking issues related to foreign banks' federal branches or agencies in the United States and the foreign operations of national banks and federal savings associations; (4) provides legal advice on issues related to the regulatory capital requirements of national banks and federal savings associations; and (5) provides legal advice on issues of cybersecurity as they affect national banks and federal savings associations.

¹² A comment summary was excluded if it related to a Board or FDIC regulation, was addressed in the six interagency working groups, or was too general.

Review Phase

OCC's SMEs reviewed and analyzed the comment summary charts and narrative. Comments were sent to the SMEs for the six working groups: capital, Bank Secrecy Act, examination cycle, appraisals, Community Reinvestment Act, and call reports. The OCC SMEs (1) analyzed the comments, (2) developed OCC staff recommendations, (3) determined whether their recommendations should be addressed by regulation through the rulemaking process or through legislative action, (4) coordinated with FDIC and FRB SMEs on the federal banking agencies' response to the comments for the report, and (5) vetted the consensus position with the OCC's Executive Committee and the Comptroller of the Currency.

For all other categories of rules, OCC SMEs determined whether the regulations were burdensome, unnecessary, or outdated and provided a written rationale for their determination to LRA personnel. LRA personnel: (1) reviewed the SMEs' recommendations, (2) with assistance from the SMEs when necessary, determined whether the regulatory burden should be addressed by regulation through the rulemaking process or through legislative action; (3) for interagency rules, coordinated with FDIC and FRB staffs to reach a consensus recommendation, (4) compiled all the comment summaries with recommendations, and (5) provided the results to the management of OCC's Law Department, Executive Committee members, and the Comptroller of the Currency for a final decision.

Reporting Phase

For OCC rules, LRA personnel drafted the narrative comment summaries for the EGRPRA report. For interagency rules, LRA personnel and the OCC SMEs (1) drafted the narrative comment summaries for 21 of the 48 interagency rules, (2) reviewed the narrative comment summaries for the 18 interagency rules drafted by the Board and 9 interagency rules drafted by FDIC, and (3) manually cross-checked OCC's narrative comment summaries against the other federal banking agencies' narrative comment summaries to ensure accuracy and completeness. OCC's Law

Department SMEs also reviewed the interagency narrative comment summaries for legal accuracy.

Once all the federal banking agencies' narrative comment summaries were complete, the Board¹³ incorporated OCC, FDIC, and interagency working group narrative comment summaries into the draft EGRPRA report and provided it to the federal banking agencies for review. At OCC, the draft EGRPRA report went through three levels of review: (1) LRA personnel, (2) OCC management, and (3) Executive Committee and Comptroller of the Currency. After each OCC group completed its review, LRA forwarded the reviewers' comments and suggested edits to the Board and FDIC management for review and consideration. The federal banking agencies discussed their respective comments and suggested edits and the Board revised the draft EGRPRA report accordingly. Throughout the EGRPRA report review process, the federal banking agencies discussed the suggested changes to the EGRPRA report until they reached a consensus.

The Board issued the EGRPRA report to the FFIEC for a notational vote¹⁴ on March 15, 2017. A week later, FFIEC issued the Joint Report to Congress¹⁵ describing the actions taken by the federal banking agencies to fulfill the EGRPRA regulatory review requirements. The federal banking agencies published the Joint Report to Congress in the Federal Register on March 30, 2017.¹⁶

Audit Results

OCC Complied With Section 2222 of the EGRPRA

We found that OCC complied with Section 2222 of the EGRPRA. As discussed above, the federal banking agencies must conduct a

¹³ The Board representative, as chair of the FFIEC, was responsible for drafting the Joint Report to Congress.

¹⁴ A notational vote is a procedure under which the matters to be decided are listed and circulated among eligible voters, who indicated their approval or disapproval by making a mark (notation) on the list.

¹⁵ Federal Financial Institutions Examination Council, *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act*, March 21, 2017

¹⁶ 82 FR 15900

review of their regulations at least once every 10 years to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In accordance with Section 2222 of the EGRPRA, OCC (1) categorized its regulations by type; (2) provided notice and solicited public comment on the 12 regulatory categories at regular intervals, asking commenters to identify regulations that were outdated, unnecessary, or unduly burdensome; (3) completed its review within 10 years; (4) published in the Federal Register a summary of comments received, identifying significant issues raised and providing comment on such issues; (5) eliminated unnecessary regulations to the extent that such action was appropriate; and (6) submitted a report to Congress.

The Joint Report to Congress described the EGRPRA review process, summarized the public comments received, identified and noted the merits of the significant issues raised by the commenters, described the federal banking agencies' responses to the comments, and included the federal banking agencies' recommendations for legislative change. The report also detailed the initiatives the federal banking 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. Specifically, the capital, real estate appraisals, and examination frequency regulations and regulatory reporting were identified for modifications to achieve meaningful burden reduction.

As a result of the EGRPRA review, OCC updated or amended 128 sections of its regulations, eliminated 172 sections of its regulations, issued 2 final rules amending regulations, and proposed 6 legislative actions.

* * * * *

We appreciate the courtesies and cooperation extended by your staff during the audit. For a list of major contributors to this report, see appendix 2, and for report distribution, see appendix 3. If you have questions, please contact me at (202) 927-8783 or Khuyen Tran, Audit Manager, at (202) 927-8785.

/s/

Katherine E. Johnson
Audit Director

The objective of our audit was to determine whether the Office of the Comptroller of the Currency's (OCC) process to review its regulations conforms to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). The scope of our audit was June 2014 through March 2017. We conducted our fieldwork in Washington, DC, from September 2015 through July 2017.

To accomplish our objective, we reviewed the following:

- Federal Financial Institutions Examination Council, *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act* (July 31, 2007)
- Federal Register Notices jointly published by the Board of Governors of the Federal Reserve System (Board), OCC, and the Federal Deposit Insurance Corporation (FDIC) and the comments received for each Federal Register Notice. The Federal Register Notices were issued on June 4, 2014; February 13, 2015; June 5, 2015; and December 23, 2015.
- the minutes of the six outreach meetings held from December 2014 to December 2015
- relevant public comments, OCC-prepared public comment summaries and charts, and recommendations for OCC and interagency regulations
- OCC's *Policies and Procedures Manual*, and *Guide to OCC Rulemaking Procedures: A Staff Manual*
- Federal Financial Institutions Examination Council, *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act* (March 21, 2017)

We had OCC Legislative and Regulatory Activities (LRA) Division personnel demonstrate the EGRPRA review process. To understand the process, we selected three comment letters from the four Federal Register Notices and six outreach meetings, including a (1) significant OCC application and reporting regulation from Federal Register Notice 1, (2) significant interagency safety and soundness regulation from Federal Register Notice 3, and (3) non-significant OCC oral comment, relating to a directors, officers, and

employees regulation, received at an outreach meeting held in Washington, DC. LRA personnel walked us through the entire EGRPRA review process for each selected comment letter which included the (1) receipt of the comment letter, (2) summary of the comment letter included in the applicable Federal Register Notice comment summary, (3) summary of the comment letter included in the categorized comment summary chart, (4) summary of comments distributed to the OCC Executive Committee and Comptroller of the Currency, and (5) inclusion in the Joint Report to Congress, if applicable. We also reconciled OCC's comment summaries to the related comments maintained at <https://www.regulations.gov>.

We interviewed:

- OCC's LRA personnel involved in the EGRPRA review process; and
- Board and FDIC personnel involved in the EGRPRA review and interagency collaboration processes.

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

Appendix 2
Major Contributors to This Report

Khuyen Tran, Audit Manager
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