



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

February 2018

COMMUNITY BANKS AND CREDIT UNIONS

Regulators Could Take Additional Steps to Address Compliance Burdens

GAO Highlights

Highlights of [GAO-18-213](#), a report to the Chairman, Committee on Small Business, House of Representatives

Why GAO Did This Study

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

What GAO Recommends

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

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

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What GAO Found

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

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

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

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

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Abbreviations

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

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February 13, 2018

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

Dear Mr. Chairman:

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

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

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

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

Overview of Federal Financial Regulators for Community Banks and Credit Unions

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

Table 1: Federal Depository Institution Regulators and Their Functions

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

⁵See 12 U.S.C. § 1757a(c)(1)(A).

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

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

Source: GAO. | GAO-18-213

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

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

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

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

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

Recent Regulatory Changes

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

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

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

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

⁹[GAO-12-881](#).

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

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

Prior Studies on Regulatory Burden Generally Focused on Costs

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

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

¹¹ [GAO-15-67](#).

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

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

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

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

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

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

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

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

HMDA Requirements Deemed Time Consuming by Institutions but Critical to Others

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

¹⁵To identify regulations deemed most burdensome, we interviewed institutions and reviewed comments made to regulators in letters or public forums. We selected a non-generalizable sample of 10 community banks and 7 credit unions to include institutions with certain asset levels, loan activity characteristics, and geographic locations. After the interviews demonstrated that considerable consensus existed among institutions about the most burdensome regulations, we conducted six focus groups with 46 banks and credit unions to identify the characteristics of the regulations that made them burdensome. Where possible, we corroborated these findings by reviewing the comment letters regulators received from banks, credit unions, their trade associations and other parties as part of regulatory review efforts conducted under EGRPRA in 2014–2016.

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

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

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

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

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

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

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

Representatives of many community banks and credit unions with whom we spoke also expressed concerns that compliance requirements for HMDA were increasing. The Dodd-Frank Act included provisions to expand the information institutions must collect and submit under HMDA, and CFPB issued rules implementing these new requirements that mostly became effective January 2018.²⁰ In addition to certain new data requirements specified in the act, such as age and the total points and fees payable at origination, CFPB's amendments to the HMDA reporting requirements also added additional data points, including some intended to collect more information about borrowers such as credit scores, as well as more information about the features of loans, such as fees and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reductions in BSA/AML reporting requirements would hinder law enforcement, especially because depositing cash through ATMs has become very easy.

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

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

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

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

misunderstandings of the rule. FinCEN officials told us that under the final rule, financial institutions can rely on the beneficial ownership information provided to them by the entity seeking to open the account. Under the final rule, the party opening an account on behalf of the legal entity customer is responsible for providing beneficial ownership information, and the financial institution may rely on the representations of the customer unless it has information that calls into question the accuracy of those representations. The financial institution does not have to confirm ownership; rather, it has to verify the identity of the beneficial owners as reported by the individual seeking to open the account, which can be done with photocopies of identifying documents such as a driver's license. FinCEN issued guidance explaining this aspect of the final rule in 2016.³²

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

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

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

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

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

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

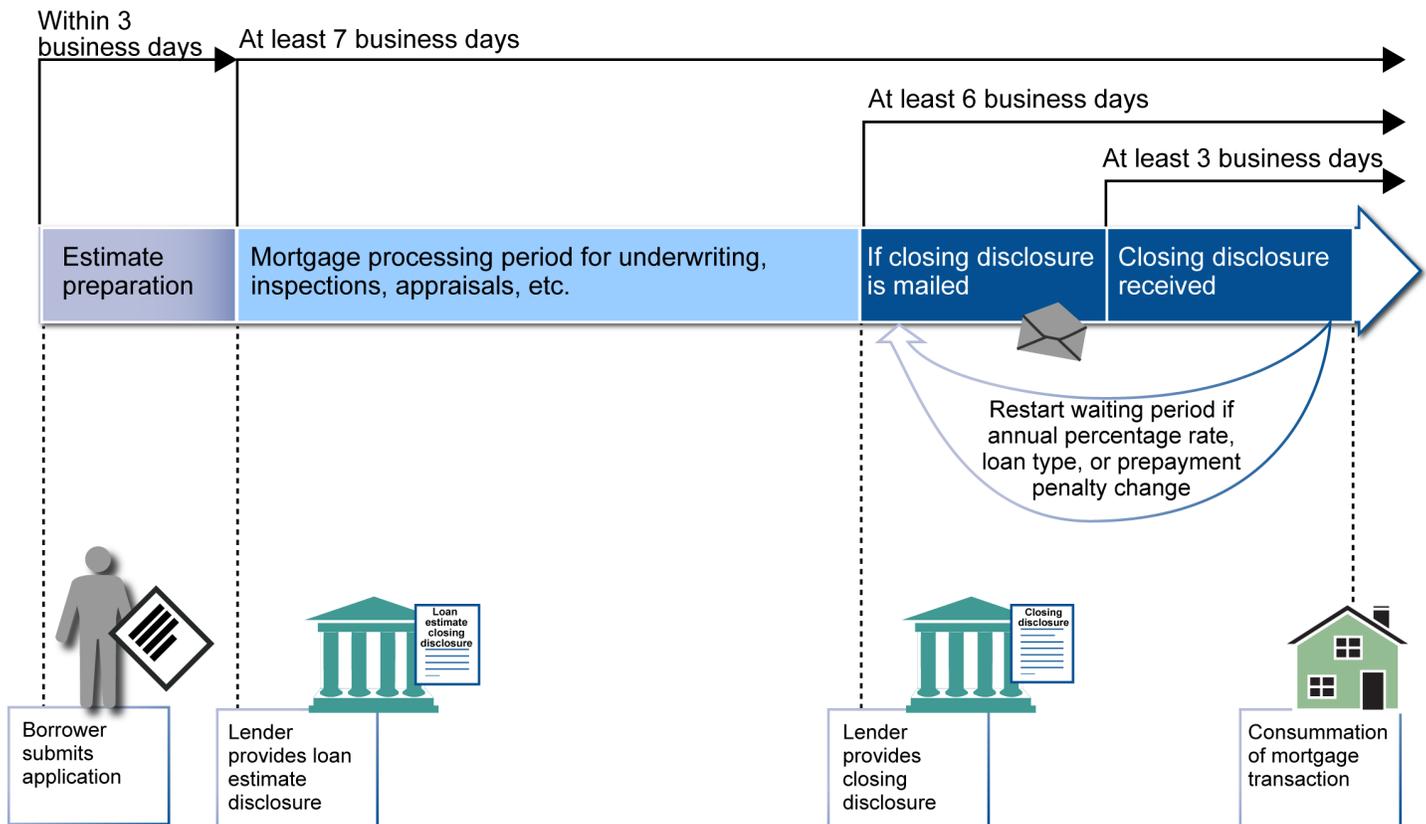
Under TRID, lenders generally must provide residential mortgage loan applicants with two forms, and deliver these documents within specified time frames (as shown in fig. 1).

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

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

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

Figure 1: Timeline of TILA-RESPA Integrated Disclosure Requirements



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

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

In all of our focus groups and most of our interviews, representatives of community banks and credit unions said that TRID has increased the time required to comply with mortgage disclosure requirements and increased the cost of mortgage lending. In half of our focus groups, participants discussed how they have had to spend additional time ensuring the accuracy of their initial estimates of mortgage costs, including fees charged by third parties, in part because they are now financially responsible for changes in fees during the closing process. Some participants also discussed how they have had to hire additional staff to meet TRID's requirements. In one focus group of community banks, participants described how mortgage loans frequently involve the use of multiple third parties, such as appraisers and inspectors, and obtaining accurate estimates of the amounts these parties will charge for their services within the 3-day period prescribed by TRID can be difficult. The

community banks we spoke with also discussed how fees from these parties often change at closing, and ensuring an accurate estimate at the beginning of the process was not always possible. As a result, some representatives said that community banks and credit unions have had to pay to cure or correct the difference in changed third-party fees that are outside their control. In most of our focus groups and some of our interviews, representatives told us that this TRID requirement has made originating a mortgage more costly for community banks and credit unions.

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

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

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

In all of our focus groups and most of our interviews, community banks and credit unions also said that TRID's mandatory waiting periods and disclosure schedules increased the time required to close mortgage loans, which created burdens for the institutions and their customers. Several representatives we interviewed told us that TRID's waiting periods led to delays in closings of about 15 days. The regulation mandates that mortgage loans generally cannot be consummated sooner than 7 business days after the loan estimate is provided to an applicant,

and no sooner than 3 business days after the closing disclosure is received by the applicant. If the closing disclosure is mailed, the lender must add another 3 business days to the closing period to allow for delivery. Representatives in some of our focus groups said that when changes needed to be made to a loan during the closing period, TRID requires them to restart the waiting periods, which can increase delays. For example, if the closing disclosure had been provided, and the loan product needed to be changed, a new closing disclosure would have to be provided and the applicant given at least 3 days to review it. Some representatives we interviewed said that their customers are frustrated by these delays and would like to close their mortgages sooner than TRID allows. Others said that TRID's waiting periods decreased flexibility in scheduling the closing date, which caused problems for homebuyers and sellers (for instance, because transactions frequently have to occur on the same day).

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

CFPB staff told us that it is too early to definitively identify what impact TRID has had on borrowers' understanding of mortgage terms, but told us

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mechanisms for Regulators to Address Regulatory Burden Include Mandated Decennial Reviews

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

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

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

⁴⁵See 12 U.S.C. § 3311.

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

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

Bank Regulators' 2017 EGRPRA Review Process and Results

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

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

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

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

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

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

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

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

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

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

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

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

In response to these concerns, the regulators described a review of the Call Report requirements intended to reduce the number of items to be reported to the regulators. The regulators had started this effort to address Call Report issues soon after the most recent EGRPRA process had begun in June 2014. In the 2017 EGRPRA report, the regulators noted that they developed a new Call Report form for banks with assets of less than \$1 billion and domestic offices only. For instance, according to the regulators, the new form reduced the number of items such banks had to report by 40 percent. Staff from the regulators told us that about 3,500 banks used the new small-bank reporting form in March 2017, which represented about 68 percent of the banks eligible to use the new form. OCC officials told us that an additional 100 federally chartered banks submitted the form for the 2017 second quarter reporting period. After the issuance of the 2017 EGRPRA report, in June 2017 the regulators issued additional proposed revisions to the three Call Report forms that banks are required to complete. These proposed changes are to become effective in June 2018.⁵⁰ For example, one of the proposed changes to the new community bank Call Report form would change the frequency of reporting certain data on non-accrual assets—nonperforming loans that are not generating their stated interest rate—from quarterly to semi-annually. In November 2017, the agencies issued further proposed revision to the community bank Call Report that would delete or consolidate a number of items and add a new, or raise certain existing, reporting thresholds. The proposed revision would take effect as of June 2018.⁵¹

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

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

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

In response, in July 2017, the regulators proposed raising the threshold for when an appraisal is required from \$250,000 to \$400,000 for commercial real estate loans.⁵² The regulators indicated that the appraisal requirements for 1-4 family residential mortgage loans above the current \$250,000 would not be appropriate at the this time because they believed having such appraisals for loans above that level increased the safety of those loans and better protected consumers and because other participants in the housing market, such as the Department of Housing and Urban Development and the government-sponsored enterprises, also required appraisals for loans above that amount. However, the depository institution regulators included in the proposal a request for comment about the appraisal requirements for residential real estate and what banks think are other factors that should be included when considering the threshold for these loans. As part of the 2017 EGRPRA process, the regulators also received comments indicating that banks in rural areas were having difficulty securing appraisers. In the EGRPRA report, the regulators acknowledged this difficulty and in May 2017, the bank regulators and NCUA issued agency guidance on how institutions could obtain temporary waivers and use other means to expand the pool of persons eligible to prepare appraisals in cases in which suitable appraiser staff were unavailable. The agencies also responded to commenters who found the evaluation process confusing by issuing an interagency advisory on the process in March 2016.⁵³ Evaluations may be used instead of an appraisal for certain transactions including those under the threshold.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NCUA 2017 EGRPRA Process and Results

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

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

Bank Regulators and NCUA
2007 EGRPRA Review
Process and Results

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

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

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

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

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

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

Other Retrospective Reviews

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

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

⁶⁰ See 5 U.S.C. § 610(a).

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

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

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

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

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

CFPB Not Included and Significant Mortgage Regulations Not Assessed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulators Have Not
Conducted or Reported
Quantitative Analyses

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

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

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

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

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

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

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

Reviews Have Not Considered Cumulative Effects of Regulations

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

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

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

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

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

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

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

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

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

Conclusions

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

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

Recommendations for Executive Action

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

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

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

Agency Comments and Our Evaluation

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

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

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

The Federal Reserve agreed with the two recommendations pertaining to the EGRPRA process. Regarding the need to conduct and report on quantitative analysis whenever feasible to strengthen and to increase the transparency of the EGRPRA process, the Federal Reserve plans to coordinate with FDIC and OCC to identify opportunities to conduct quantitative analyses where feasible during future EGRPRA reviews. With

respect to the second recommendation, the Federal Reserve agreed that the cumulative impact of regulations on depository institutions is important and plans to coordinate with FDIC and OCC to identify further opportunities to seek comment on bodies of regulations and how they could be streamlined.

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

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

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

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

Sincerely yours,

A handwritten signature in black ink that reads "Lawrence L. Evans, Jr." in a cursive script.

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

Appendix I: Objectives, Scope, and Methodology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To determine whether the bank regulators had required banks to comply with certain provisions from which the institutions might be exempt, we identified eight exemptions from the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 from which community banks and credit unions should be exempt and reviewed a small group of the most recent examinations to identify instances in which a regulator may not have

applied an exemption for which a bank was eligible.⁶ We reviewed 20 safety and soundness and consumer compliance examination reports of community banks and eight safety and soundness examination reports of credit unions. The bank examination reports we reviewed were for the first 20 community banks we contacted requesting participation in the first focus group. The bank examination reports included examinations from all three bank regulators (FDIC, Federal Reserve, and OCC). The NCUA examination reports we reviewed were for the eight credit unions that participated in the second focus group of credit unions. Because of the limited number of the examinations we reviewed, we cannot generalize whether regulators extended the exemptions to all qualifying institutions.

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

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

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

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

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

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

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

Appendix II: Comments from the Consumer Financial Protection Bureau



1700 G Street, N.W., Washington, DC 20552

January 18, 2018

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

Dear Mr. Evans:

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

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

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

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

¹ 12 U.S.C. 5511(b)(3).

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

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

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

Sincerely,



David Silberman
Associate Director for Research, Markets, and Regulations

consumerfinance.gov

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



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

MARK E. VAN DER WEIDE
GENERAL COUNSEL

January 11, 2018

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

Dear Mr. Evans:

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

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

1. [D]evelop plans for the Federal Reserve's regulatory analyses describing how it will conduct and report on quantitative analysis whenever feasible to strengthen the rigor and transparency of the EGRPRA process[; and,]
2. [D]evelop plans for conducting evaluations that would identify opportunities to streamline bodies of regulation.

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

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

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

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

Sincerely,



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

Appendix IV: Comments from the Federal Deposit Insurance Corporation



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9690

Legal Division

January 19, 2018

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

Dear Mr. Evans:

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

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

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

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

As noted in the Report, during the latest EGRPRA review process the agencies focused, consistent with the statute, on the significant issues raised by commenters. Comments were provided in writing in response to notices of regulatory review in the *Federal Register* as well as in person at outreach events, which focused on hearing the views of community bank panelists and other local stakeholders. This approach allowed the agencies to prioritize areas that were viewed by commenters as the most burdensome. As a result, the agencies have taken or are in the process of taking key initiatives – identified by commenters – to reduce burden. For example, the agencies (1) proposed increasing the appraisal threshold for commercial real estate transactions, (2) proposed amending the regulatory capital rules, particularly for community

Mr. Lawrence L. Evans, Jr.

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January 19, 2018

banks, and (3) are continuing the process of simplification of call reports, including the introduction of a streamlined call report (thus far removing 40 percent of the data items previously included in the report with about an additional 11 percent of data items expected to be removed effective June 30, 2018) available to the vast majority of community banks. Where possible and appropriate, the agencies gathered additional quantitative data through the notice and comment process to enable more in-depth analysis and review.

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

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

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

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

**Appendix IV: Comments from the Federal
Deposit Insurance Corporation**

Mr. Lawrence L. Evans, Jr.

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January 19, 2018

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

Sincerely,



Charles Yi
General Counsel

Appendix V: Comments from the National Credit Union Administration



National Credit Union Administration
Office of the Executive Director

January 16, 2018

SENT BY E-MAIL

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

Dear Managing Director Evans:

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

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

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Mark Treichel".

Mark Treichel
Executive Director

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

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



Office of the Comptroller of the Currency

Washington, DC 20219

February 01, 2018

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

Dear Mr. Evans:

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

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

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

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

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

Sincerely,



Karen Solomon
Acting Senior Deputy Comptroller and Chief Counsel

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

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

Staff Acknowledgments

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

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