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Via electronic submission

July 12, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Plan for the Review of Bureau Rules for Purposes of the Regulatory Flexibility Act; Docket No. CFPB-2019-0024

Dear Director Kraninger:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) request for comment (“RFC”) concerning its plan for periodic review of rules, pursuant to Section 610 of the Regulatory Flexibility Act (“RFA” or “Act”). ICBA believes that RFA reviews provide important opportunities to assess whether rules are still meeting their desired outcomes and whether revisions could more effectively achieve those outcomes. Accordingly, ICBA supports the RFA review process and commends the Bureau on seeking feedback on how the process could be improved.

Background

Section 610 of the RFA stipulates that each agency shall publish in the Federal Register a plan for the periodic review of rules which have or will have a significant economic impact upon a

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

substantial number of small entities.² The review is to be used in determining whether such rules should continue without change, or should be amended or rescinded. Section 610 requires an agency to conduct a RFA review within 10 years of the rule’s effective date, and to consider:

- (1) the continued need for the rule,
- (2) the nature of complaints or comments received concerning the rule,
- (3) the complexity of the rule,
- (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and
- (5) the length of time since the rule has been evaluated or the degree to which the rule is still relevant.³

Over the next several years, the Bureau anticipates performing RFA reviews on rules promulgated since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). While the Bureau will seek comment on each individual RFA review, it currently seeks comment on its overall procedure for conducting RFA reviews.

ICBA Comments

Review Plan

Approximately nine years after every rule is published, the Bureau will assess whether the rule has a significant economic impact on a substantial number of small entities, thus warranting a full RFA review. The Bureau may also use its discretion to review rules implemented by predecessor agencies or rules not deemed to have a substantial economic impact, neither of which trigger a mandatory review under Section 610.

The Bureau will then publish in the *Federal Register* a list of the rules that it plans to review within the upcoming year. The Bureau will also publish a brief description of each rule in the list, as well as the need for, and legal basis of, the rule. Finally, the publication will request public comment on each rule, with a focus on the five considerations outlined in Section 610.

ICBA believes that the Bureau’s proposed plan sufficiently meets the purpose and intent of the Act, and will provide adequate opportunities for stakeholders to submit meaningful comments to the Bureau. ICBA is particularly appreciative of the Bureau’s stated intention to consider reviews of rules that do not have a significant economic impact on a substantial number of small entities. Though not mandated by the Act, this process will maintain the spirit of the Act, by periodically assessing whether rulemakings can be tailored in response to changed circumstances.

² 5 U.S.C. 610

³ *Id.*

Annual Publication of RFA Reviews

While it is clear how the Bureau intends to publish and collect comments on rules under review, it is less clear what the Bureau intends to do with the information that it collects. The RFC notes that the Bureau will use the reviews to determine whether a follow-up rulemaking or deregulatory action is needed, but it does not discuss what the Bureau will do with information or comments received on rules that will not be revised or rescinded.

ICBA presumes that information collected by the Bureau under RFA reviews is valuable and insightful. The Bureau should attempt to collect, collate and convey that information, regardless of whether a rule is ultimately revised or rescinded. The report published under the Economic Growth and Regulatory Paperwork Reduction Act (“EGRPRA”)⁴ is a good model for the Bureau to emulate.

Under EGRPRA, federal banking agencies are mandated to conduct a review of regulations in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Unlike RFA reviews, EGRPRA reports require the agencies to summarize, and respond to, all comments received in response to the review. ICBA encourages the Bureau to similarly publish and respond to all comments received in response to an RFA review, possibly publishing such reports on an annual basis.

Related to the EGRPRA review process, ICBA recommends that the Bureau voluntarily participate in the decennial review. Although RFA reviews are certainly welcome, they only occur once – ten years after being finalized. In contrast, rules reviewed under EGRPRA provide stakeholders with repeated opportunities for review and comment, thereby establishing a longitudinal record of information.

⁴ 12 U.S.C. 3311.

Again, ICBA appreciates the Bureau's willingness to solicit comments on its RFA review process, and we hope our suggestions will make the review procedure even more impactful. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111 or michael.emancipator@icba.org.

Sincerely,

/s/

Michael Emancipator
Vice President and Regulatory Counsel