

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-0515

**Memorandum**

To: Members, Committee on Small Business  
From: Committee Staff  
Date: February 23, 2018  
Re: Hearing: “How Red Tape Affects Community Banks and Credit Unions: A GAO Report”

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On Tuesday, February 27, 2018 at 2:00 p.m., the Committee on Small Business will meet in Room 2360 of the Rayburn House Office Building for the purpose of examining a report by the United States Government Accountability Office (GAO) assessing how regulations impact community banks and credit unions. The GAO report identifies a number of financial regulations that are burdensome for small financial institutions. Additionally, the report outlines the tools and methods that financial regulators have at their disposal to reduce burdens on small financial institutions. The hearing will provide Members of the Committee the opportunity to explore the regulations that are impacting the institutions that are instrumental in delivering capital to the nation’s small businesses.

**I. Introduction**

With over 29 million small businesses operating in the United States,<sup>1</sup> the nation’s smallest firms play an outsized role in the American economy. Not only do they employ nearly half of the private sector workforce in the country,<sup>2</sup> but they are also responsible for creating almost two out of every three new private sector jobs.<sup>3</sup> With the recent signing of the Tax Cuts and Jobs Act<sup>4</sup> into law, small businesses are reporting growing optimism.<sup>5</sup>

However, despite increased confidence scores, the financial lending environment continues to be challenging for small businesses. According to a recent report by the United States Small Business Administration’s Office of Advocacy, small business lending decreased significantly during the Great Recession and has remained depressed compared to pre-recession levels.<sup>6</sup> The

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<sup>1</sup> SBA OFFICE OF ADVOCACY, SMALL BUSINESS PROFILE (2017), *available at* [https://www.sba.gov/sites/default/files/advocacy/United\\_States\\_1.pdf](https://www.sba.gov/sites/default/files/advocacy/United_States_1.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> SBA OFFICE OF ADVOCACY, FREQUENTLY ASKED QUESTIONS (2017), *available at* [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf?utm_medium=email&utm_source=govdelivery).

<sup>4</sup> Pub. L. No. 115-97 (2017).

<sup>5</sup> NATIONAL FEDERATION OF INDEPENDENT BUSINESS: JANUARY 2018 REPORT: SMALL BUSINESS OPTIMISM INDEX (2018), *available at* <https://www.nfib.com/surveys/small-business-economic-trends/>.

<sup>6</sup> REBEL A. COLE, KRHENBUHL GLOBAL CONSULTING, SBA, OFFICE OF ADVOCACY, HOW DID BANK LENDING TO SMALL BUSINESS IN THE UNITED STATES FARE AFTER THE FINANCIAL CRISIS 26 (2018).

Great Recession occurred between December 2007 and the summer of 2009<sup>7</sup> and was a result of a mortgage meltdown that sparked a financial crisis. In an attempt to bring safety and soundness to the banking industry, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).<sup>8</sup> Although Congress did not intend to levy burdens on small financial institutions that were not instrumental players in the financial crisis, heightened oversight of larger banks caused a “trickle-down effect”<sup>9</sup> on community banks and credit unions. Additionally, the Dodd-Frank law created the Consumer Financial Protection Bureau (CFPB)<sup>10</sup> in an effort to safeguard consumers participating in the financial sector.

While large corporations regularly finance their job creation and expansion plans through debt and equity markets, small businesses traditionally utilize conventional bank borrowing to finance their projects. Hometown community banks and local credit unions that specialize in relationship banking are critical components of access to capital for small businesses across the nation. Therefore, financial regulations that impact community banks and credit unions can have an everlasting impact on how small businesses acquire capital. A stagnant bank lending environment may act as a roadblock for small business growth in neighborhoods and communities in America.

## **II. The GAO Report**

To comprehensively examine the role banking regulations have on small financial institutions, House Committee on Small Business Chairman Steve Chabot (R-OH) requested a study to be conducted by GAO in the fall of 2015. As a result, GAO worked extensively with dozens of community banks and credit unions to determine the impact.<sup>11</sup> GAO utilized a combination of interviews, focus groups, site visits and reviews of examination documents to evaluate how financial regulations are impacting small financial institutions. For community banks, GAO selected institutions that had an asset size of \$1.2 billion or less and for credit unions the asset size was \$860 million. These size standards captured 90 percent of all banks and 95 percent of all credit unions.<sup>12</sup> Beyond the regulations, GAO also evaluated the tools available to financial regulators to reduce burdensome regulations. To assess the tools available to regulators, GAO reviewed comment letters and transcripts of regulatory review forums.<sup>13</sup>

### **a. Burdensome Regulations**

The work compiled by GAO determined that the financial industry cited a number of regulations as being overly burdensome. The regulations can be placed into two categories: mortgage rules and anti-money laundering requirements.<sup>14</sup>

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<sup>7</sup> ROBERT RICH, FEDERAL RESERVE BANK OF NEW YORK, *THE GREAT RECESSION, FEDERAL RESERVE HISTORY* (2013), available at [https://www.federalreservehistory.org/essays/great\\_recession\\_of\\_200709](https://www.federalreservehistory.org/essays/great_recession_of_200709).

<sup>8</sup> Pub. L. No. 111-203 (2010).

<sup>9</sup> FEDERAL RESERVE BANK OF DALLAS, *ON THE RECORD: A CONVERSATION WITH ROBERT D. HANKINS*, *Southwest Economy* 9 (2011).

<sup>10</sup> <https://www.consumerfinance.gov/about-us/the-bureau/creatingthebureau/>.

<sup>11</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-213, *COMMUNITY BANKS AND CREDIT UNIONS: REGULATORS COULD TAKE ADDITIONAL STEPS TO ADDRESS COMPLIANCE BURDENS* 3 (2018).

<sup>12</sup> *Id.* at 57.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 11.

Enacted in 1975 to provide transparency to the home mortgage lending market,<sup>15</sup> the Home Mortgage Disclosure Act (HMDA)<sup>16</sup> was identified as one of the most burdensome regulations impacting small financial institutions. According to the industry participants GAO talked with, the data collection and reporting requirements outlined in HMDA cause the most concern.<sup>17</sup> Additionally, the Dodd-Frank law transferred regulatory authority from the Federal Reserve System to the newly created CFPB, and in doing so, expanded the amount of information community banks and credit unions must collect and submit.<sup>18</sup> Critics of HMDA have cited the time consuming nature of the regulation and its impact on banking operations.<sup>19</sup>

The second regulation outlined in the GAO report is a combination of two existing mortgage laws and their implementing regulations that were consolidated under the Dodd-Frank law. The result of the consolidation of the Truth-in-Lending Act (TILA)<sup>20</sup> with the Real Estate Settlement Procedures Act (RESPA)<sup>21</sup> and their implementing regulations within Dodd-Frank is known as TILA-RESPA Integrated Disclosure (TRID).<sup>22</sup> Participants in GAO's study reported that due to time burdens associated with the new requirements and the increased costs of mortgages to consumers, the new TRID requirements are complicated and overly burdensome.<sup>23</sup>

The last major regulation cited in the GAO report deals with anti-money laundering laws. Originally enacted as the Currency and Foreign Transactions Reporting Act in 1970 and more commonly known as the Bank Secrecy Act (BSA), which helps to prevent money laundering,<sup>24</sup> was identified by banking industry participants as overly burdensome. Over the years, the requirements and regulations under BSA have been amended numerous times,<sup>25</sup> and according to banking participants, these changes have increased compliance efforts and costs. Additionally, recent rulemakings by the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) have caused alarm for institutions as they have added to the already existing burdens.<sup>26</sup>

## **b. Reducing Burdens**

One of the primary tools available to financial regulators to reduce burdens associated with banking regulations is the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).<sup>27</sup> Specifically, EGRPRA requires financial regulators to perform a comprehensive look-back review of all financial regulations every ten years.<sup>28</sup> Since enactment, two EGRPRA reviews have been completed in 2007<sup>29</sup> and 2014.<sup>30</sup> While the National Credit Union

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<sup>15</sup> <https://www.ffiec.gov/hmda/>.

<sup>16</sup> Pub. L. No. 94-200 (1975).

<sup>17</sup> *Supra* note 11, at 11.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.*

<sup>20</sup> Pub. L. No. 90-321 (1968).

<sup>21</sup> Pub. L. No. 93-533 (1974).

<sup>22</sup> *Supra* note 11, at 22.

<sup>23</sup> *Id.* at 24.

<sup>24</sup> Pub. L. No. 91-508 (1970).

<sup>25</sup> *Supra* note 11, at 18.

<sup>26</sup> *Id.* at 19.

<sup>27</sup> 12 U.S.C. § 3311.

<sup>28</sup> *Supra* note 11, at 33.

<sup>29</sup> <https://egrpra.ffiec.gov/docs/egrpra-joint-report.pdf>.

<sup>30</sup> [https://www.ffiec.gov/pdf/2017\\_FFIEC\\_EGRPRA\\_Joint-Report\\_to\\_Congress.pdf](https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf).

Administration,<sup>31</sup> the primary credit union regulator, is not required to comply with EGRPRA, the agency has voluntarily participated over the years.

In assessing EGRPRA reviews, GAO found a number of restrictions in the process that they recommend to be addressed. One of the limitations holds that CFPB is not required to comply, thus leaving many regulatory changes implemented under the Dodd-Frank law outside of the EGRPRA review window.<sup>32</sup> Despite this exclusion, the Dodd-Frank law does require CFPB to conduct reviews under Section 1022(d).<sup>33</sup> Additionally, GAO found that EGRPRA does not require any extensive quantitative data calculations.<sup>34</sup> Building off a lack of quantitative metrics, GAO found that there was an underwhelming cumulative burden analysis requirement within EGRPRA.<sup>35</sup> GAO addresses many of these shortcomings in their final recommendations.<sup>36</sup>

Beyond EGRPRA, federal agencies are required to comply with the Regulatory Flexibility Act (RFA).<sup>37,38</sup> Under section 610 of the RFA, agencies are required to perform a review of rules that impact small entities.<sup>39</sup> According to GAO, recently published reports by their office have shown that financial regulator reviews have not complied with section 610 reviews of the RFA.<sup>40</sup>

### III. Conclusion

As Congress continues to study the impact of regulations on our economy, a robust financial lending environment is instrumental for small businesses to grow and create jobs. Overly burdensome regulations that impact small financial institutions directly impact small businesses, entrepreneurs and startups. The United States House of Representatives has taken a number of steps to address many of the topics discussed in this report, including comprehensive regulatory reform.<sup>41</sup> However, more work is needed to create a stronger and more robust Main Street economy across America.

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<sup>31</sup> 12 U.S.C. § 1752.

<sup>32</sup> *Supra* note 11, at 44.

<sup>33</sup> *Supra* note 8, at § 1022(d).

<sup>34</sup> *Supra* note 11, at 48.

<sup>35</sup> *Id.* at 49.

<sup>36</sup> *Id.* at 52.

<sup>37</sup> 5 U.S.C. §§ 601-12.

<sup>38</sup> For a comprehensive discussion of the Regulatory Flexibility Act, please see the Committee's hearing memorandum on *Regulation: The Hidden Small Business Tax. Hearing Before the H. Comm. on Small Business*, 114th Cong. (Apr. 11, 2016, available at [https://smallbusiness.house.gov/uploadedfiles/4-14-16\\_hearing\\_memo.pdf](https://smallbusiness.house.gov/uploadedfiles/4-14-16_hearing_memo.pdf)).

<sup>39</sup> *Supra* note 37, at § 610.

<sup>40</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-256, FINANCIAL SERVICES REGULATIONS: PROCEDURES FOR REVIEWS UNDER REGULATORY FLEXIBILITY ACT NEED TO BE ENHANCED (2018).

<sup>41</sup> H.R. 5, 115th Cong. (2017).