A PROPOSAL TO ENHANCE THE EFFECTIVENESS OF REGULATORY REVIEWS PERFORMED PURSUANT TO THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT

Eric C. Breitenstein

FEDERAL DEPOSIT INSURANCE CORPORATION

February 24, 2021

Executive Summary

The FDIC's Office of Inspector General (OIG) released an evaluation in February 2020 of the cost-benefit analysis process used in FDIC rulemaking. One of the Inspector General's findings was that the FDIC does not perform either cost-benefit analyses or regulatory risk assessments as part of regulatory reviews conducted pursuant to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). The OIG recommended the FDIC begin conducting retrospective cost-benefit analyses, including regulatory risk assessments. This Summary describes a regulatory risk assessment process that can be adopted by the Regulatory Analysis Section (RAS) and performed as part of regulatory reviews conducted pursuant to EGRPRA. In addition to enhancing the transparency and effectiveness of EGRPRA reviews, the risk assessment process fulfills the OIG recommendation to conduct regulatory risk assessments.

Assessments would be performed by RAS staff and the section would serve as the coordinator and record-keeper for the assessments. To perform an assessment, an RAS analyst would collect information about a rule as part of obtaining answers to questions raised by the assessment criteria listed in the Table below. By responding to the questions in the assessment criteria, the analyst would be led to a qualitative judgment as to whether the level of risk that a rule is outdated, unnecessary, or unduly burdensome, is low, medium, or high. Rules with "high" risk may be candidates for more thorough analysis, such as a retrospective cost-benefit analysis.

Performing risk assessments will enhance the effectiveness of EGRPRA reviews by providing the FDIC information about its rules, especially those rules for which the outreach conducted during an EGRPRA review did not yield any public comments. Performing risk assessments will also allow the FDIC to avoid a charge that its EGRPRA reviews rely too heavily on public comments. In addition, performing risk assessments will produce documentary information either explicitly as part of a worksheet such as those used for Regulatory Flexibility Act (RFA) analyses, or indirectly as a by-product of answering the questions raised by the assessment criteria. This information enhances the transparency of EGRPRA reviews and can be made available to internal or external auditors if requested. Finally, performing risk assessments will help the FDIC achieve its goal of taking a more structured approach to regulatory analysis.

No additional staff or resources are necessary for the RAS to perform risk assessments, and the uncomplicated nature of the assessments means that little or no additional training should be needed. Some of the information that will be of use to an analyst performing an assessment is likely to be found in a rule's major rule determination memorandum or RFA worksheet, and the rest may be obtained from FDIC subject matter experts, legal staff, and the *Federal Register* notices pertaining to a rule.

In order for RAS analysts to gain experience performing risk assessments, and to allow assessments to contribute to the next EGRPRA review, the RAS should begin implementing the process in June 2021. Senior RAS analysts should conduct assessments on several rules chosen by senior management that are representative of the variety of rules issued by the FDIC. This initial experience of analysts and senior management can be incorporated into the assessment process. Like those used for RFA analyses, a worksheet documenting the findings and information underlying an assessment, including at least answers to the questions in the Table below, should be created for each rule assessed.

The proposed assessment will not negatively impact banks or their customers, but will fulfill an OIG recommendation, enhance the transparency and effectiveness of EGRPRA reviews, provide the FDIC more information about its rules, and help the FDIC achieve its goal of taking a more structured approach to regulatory analysis without requiring additional staff or resources. The assessment criteria are listed in the Table below.

Regulatory Risk Assessment Criteria		
Number	Criterion	Potential Criterion Values
1	Likelihood of Improving the Attainment of Statutory Objectives	Low, Medium, High
2	Scope of the Rule in Terms of the Number of Entities or Volume of Activity It Affects	Number of entities and volume of activity affected
3	Complexity or Compliance Cost Associated With the Rule	Cost ($ amount or Low, Medium, High); Level of complexity (Low, Medium, High)
4	Extent of Reliance on Numerical Thresholds That Are Within Regulatory Discretion to Change and That May Become Less Appropriate as a Result of Inflation, Industry Structure Changes, or Other Factors	Numerical thresholds not present; Numerical thresholds present but no regulatory discretion; Numerical thresholds present and discretion to change
5	Whether the Rule Is FDIC-Only or Joint	Joint rule, FDIC-only
6	Comments the FDIC Receives Through Outreach, Advisory Committees, Written Comment Letters or Other Means	None, few, some, many
7	The Length of Time the Rule Has Been in Effect or Since Last Substantial Revision	Number of years
8	Experience Gained During Periods of Significant Banking Industry Stress	Experience not relevant, is relevant
9	The FDIC Found the Rule Was "Major" for Purposes of the Congressional Review Act	Not major, major
10	The Rule Has Resulted in a Large Number of FDIC Advisory Opinions, Inquiries to the FDIC Call Center, or Inquiries to FDIC Case Managers	Has not, Has {Number}
11	Have Technological, Legislative, Economic, or Other Developments Materially Affected the Rationale for, or Most Effective Ways of Achieving the Goals of, the Rule	No, Yes
12	A Similar Rule Affecting Institutions Whose Primary Federal Regulator Is Not the FDIC Was Repealed or Significantly Modified	No, Yes
13	The FDIC Found the Rule Significantly Affected a Substantial Number of Small Entities for Purposes of the Regulatory Flexibility Act	No, Yes
Risk Classification	Risk That the Rule Has Become Outdated, Unnecessary, or Unduly Burdensome Relative to the Benefits It Achieves	Low, Medium, High

Table of Contents

I. Introduction 1
II. Background 2
a. The Inspector General Report 2
b. A Brief Description of an EGRPRA Review Process 3
III. Strategy and Implementation 5
a. Adopting a Risk Assessment to Enhance the EGRPRA Review Process 5
b. The Regulatory Risk Assessment 8
c. The Regulatory Risk Assessment as a Part of the FDIC's Strategy for Reviewing Regulations and Performing Regulatory Analysis 12
d. The Proposed Regulatory Risk Assessment Will Improve EGRPRA Reviews 15
e. A Schedule for Implementing the Risk Assessment Process and Incorporating it into the Third EGRPRA Review 16
IV. Financial Impact of the Risk Assessment on the FDIC 19
a. No Additional Expenditures Are Necessary to Adopt the Proposed Risk Assessment 20
b. The Proposed Risk Assessment Has No Effect on Revenue 21
c. The Proposed Risk Assessment Has a Cost Even If No Additional Staff Are Employed 22
d. The Opportunity Cost of Performing Risk Assessments 23
V. Non-Financial Impacts of the Risk Assessment 27
VI. Conclusion 28
VII. Bibliography 30

I. Introduction

The Federal Deposit Insurance Corporation (FDIC) insures deposits at US banks and savings institutions, and is the primary federal regulator for 3,270 financial institutions.[1] The FDIC fulfills its mission of maintaining public confidence in, and maintaining the stability of, the US financial system in part by issuing regulations pursuant to its statutory authority.

[1] Based on FDIC data as of June 30, 2020. For the remainder of this article, the term "bank" means any FDIC-insured institution.

Banking is a heavily regulated activity,[2] and for sound public policy reasons: banks benefit from federal deposit insurance and the ability to borrow directly from the Federal Reserve. In return, banks are periodically examined to ensure safe and sound operation, and are subject to minimum capital and liquidity requirements to reduce their likelihood of failure.

The FDIC is required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[3] to review its regulations at least once every 10 years. The purpose of these reviews is to, "…identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions."[4] After the abbreviation for the name of the law, these reviews are referred to as "EGRPRA reviews."

As bank regulation has grown since the passage of the Dodd-Frank Act in 2010, and as highlighted by a recent review of the FDIC's analyses of its rulemakings, discussed below, there is a need for the FDIC to implement a process that identifies which of its regulations are likely to be the most burdensome. Such a process could help improve the outcome of an EGRPRA review.

II. Background

a. The Inspector General Report

In February 2020, the FDIC's Inspector General released a report[5] evaluating the cost-benefit analysis process used in FDIC rulemaking. In particular, the Inspector General found that the FDIC does not perform either a cost-benefit analysis or a regulatory risk assessment as part

---

[2] McLaughlin, Patrick, Oliver Sherouse, and Stephen Strosko, "Regulatory Accumulation in the Financial Sector," Mercatus Center at George Mason University, 2020, https://www.quantgov.org/financial-accumulation (accessed August 25, 2020).

[3] Pub. L. No. 104–208 (1996) (codified at 12 U.S. Code § 3311), and pronounced "ah-grip-pra." The law imposes other requirements on the FDIC and other federal banking agencies. See the following webpage for more detail, https://egrpra.ffiec.gov/about/the-law.html.

[4] *Id.*

[5] Office of the Inspector General of the FDIC, "Cost Benefit Analysis Process for Rulemaking," February 2020, https://www.fdicoig.gov/sites/default/files/publications/20-003EVAL.pdf, (accessed on June 18, 2020).

of an EGRPRA review.[6] In response to this finding, the Inspector General recommended that the FDIC, "Establish, document, and implement policy and procedures for conducting retrospective cost benefit analyses on existing rules, *including a regulatory risk assessment*, as well as roles and responsibilities for the [divisions at the FDIC responsible for proposing rules], [the FDIC's] Chief Economist, and [the Division of Insurance and Research, and the Regulatory Analysis Section]."[7] This article proposes a process that fulfills the recommendation that the FDIC develop a regulatory risk assessment. This process is intended to enhance the EGRPRA review process, although it may be used separately.

b. A Brief Description of an EGRPRA Review Process

The EGRPRA requires the Federal Financial Institutions Examination Council[8] and each of the federal banking agencies (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the FDIC) to review their regulations at least once every 10 years, as mentioned above.

In broad outline, in an EGRPRA review the federal banking agencies (hereafter, the agencies) categorize their regulations by type. Then they solicit public feedback at periodic intervals by publishing notices in the *Federal Register* requesting comments on the regulations within certain categories, until all categories have been covered. In each request for comments, the public is asked to, "identify areas of regulations that are outdated, unnecessary, or unduly burdensome."[9] The agencies then publish in the *Federal Register* summaries of comments

---

[6] *Id*., pp. 26-29.
[7] *Id.*, pg. 31. Emphasis added.
[8] The Council is an inter-agency body made up of federal financial regulators, and a state liaison committee that represents the views of state financial regulators. The Council deals with matters relating to both banks and credit unions, and is, "…empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions…. and to make recommendations to promote uniformity in the supervision of financial institutions." See https://www.ffiec.gov/.
[9] Federal Financial Institutions Examination Council, "Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act," March 2017, https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-

received, significant issues raised by commenters, and the agencies' responses to or commentary on those issues. Then the agencies complete a report to Congress that includes a summary of the significant issues raised by commenters and an analysis of whether the agencies can address the issues commenters raised, or whether legislative action is required. Finally, the agencies may change or rescind regulations as appropriate.[10]

In the most recent EGRPRA review completed in March 2017, the agencies divided their regulations into 12 categories, published four *Federal Register* notices and held six public outreach meetings. Specifically, the agencies divided their rules into the following categories: "(1) Applications and Reporting; (2) Banking Operations; (3) Capital; (4) [the Community Reinvestment Act]; (5) Consumer Protection; (6) Directors, Officers and Employees; (7) International Operations; (8) Money Laundering; (9) Powers and Activities; (10) Rules of Procedure; (11) Safety and Soundness; and (12) Securities."[11] The agencies published their first request for comments on June 4, 2014,[12] their second request on February 13, 2015,[13] their third request on June 5, 2015,[14] and their fourth request on December 23, 2015.[15] Each request for comment focused on regulations within a different set of three out of the 12 categories, and each

Report_to_Congress.pdf (accessed June 23, 2020), pg. 3. Hereafter, the report will be referred to as "The 2017 EGRPRA Report."

[10] See https://egrpra.ffiec.gov/about/the-law.html for more detail. To change or rescind a rule, an agency must follow the same administrative steps as those involved in proposing a rule.

[11] "The 2017 EGRPRA Report," https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf, pg. 16.

[12] 79 Fed. Reg. 32172 (June 4, 2014) at https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12741.pdf.

[13] 80 Fed. Reg. 7980 (February 13, 2015) at https://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf.

[14] 80 Fed. Reg. 32046 (June 5, 2015) at https://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13749.pdf. In this *Federal Register* notice, the agencies added an additional category covering rules the agencies expected would be issued in their final form prior to the publication of the fourth and final *Federal Register* notice.

[15] 80 Fed. Reg. 79724 (December 23, 2015) at https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32312.pdf.

request provided the public 90 days to submit comments.[16] In response to these *Federal Register* notices, the agencies received over 230 comment letters.[17]

In addition to soliciting public comments through notices published in the *Federal Register*, the agencies held six public outreach meetings, as mentioned above. Each of the six meetings, "consisted of panels of bankers and consumer and community groups who presented their views on the agencies' regulations."[18] Each meeting was streamed live over the Internet, and for three of the meetings, online viewers could submit electronic comments in real time. The meetings were held in different major cities across the country beginning in December 2014 and ending in December 2015, and any interested member of the public was welcome to attend.[19] The comments received both in response to the *Federal Register* notices, as well as at the public outreach meetings, provided the basis from which the agencies completed the EGRPRA review process.[20]

III. Strategy and Implementation

a. Adopting a Risk Assessment to Enhance the EGRPRA Review Process

As mentioned above, the FDIC Inspector General recommended that the FDIC implement policy and procedures for conducting retrospective cost-benefit analysis on existing rules, and that a regulatory risk assessment be a part of any new procedures used to assess existing rules. This paper proposes the adoption of a regulatory risk assessment that may be used to enhance the transparency and effectiveness of EGRPRA reviews. Specifically, this paper

[16] "The 2017 EGRPRA Report," https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf, pg. 16.
[17] "The 2017 EGRPRA Report," https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf, pg. 17.
[18] *Id.*
[19] *Id.* The first meeting was held in Los Angeles, California, on December 2, 2014. Meetings were also held in Dallas, Texas; Boston, Massachusetts; Kansas City, Missouri; Chicago, Illinois; and the last meeting was held in Washington, DC, on December 2, 2015.
[20] *Id.*

proposes an assessment that can be performed by staff to inform FDIC senior management as to which of the FDIC's regulations are most likely to be outdated, unnecessary, or unduly burdensome.

The proposed assessment process, described in Section III. B. below, is intended to be an internal management tool, at least initially. Although there are potential benefits to be gained from publishing both the regulatory risk assessment process as well as its results, such benefits must be weighed against potential downsides. First, while publishing the risk assessment process may generate helpful feedback which could theoretically improve its development, it may also result in publicly committing the FDIC to a process in advance of the agency applying that process to its rules. It then may be difficult to adjust the process based on knowledge gained from applying it if the FDIC feels compelled to follow the process exactly as published. As the FDIC issues a variety of rules, a flexible assessment process that can be adapted to particular rules and adjusted based on experience will produce more accurate information for the FDIC about its rules than a formulaic "one size fits all" process. For example, were the FDIC to publish Table 1, listing the proposed assessment criteria, members of the public may come to believe that the FDIC considers only the criteria listed in Table 1 to be important for assessing a rule's "regulatory risk."

Moreover, the public may expect every rule to be assessed on each of the proposed criteria, although for some rules the data for some criteria may not be available. For other rules, the analyst may discover that criteria relevant to assessing the rule are not among those listed in Table 1. Publishing the proposed risk assessment process runs the risk of "etching in stone" a process that will have to be flexible depending on the rule that an analyst is evaluating, and the data available for evaluating that rule.

Second, many of the risk assessment criteria described below refer to an analyst's qualitative judgment. While there are quantitative criteria in the risk assessment process, the process is fundamentally subjective. An analyst's judgments will be primarily informed by her own research about the rule as well as information about the rule that the analyst obtains from subject matter experts. If the analyst's judgments, or the content of conversations with subject matter experts, could become matters of public record, they are less likely to be candid. This is especially true in cases where experience about the rule has been gained from its effects on institutions that are still in existence, as the FDIC may have nonpublic information about the effects of its rules on specific institutions.

Therefore, at least initially, the proposed risk assessment process should be used only as an internal tool to guide FDIC senior management's understanding of the risk that certain rules are likely to be outdated, unnecessary, or unduly burdensome. References to enhancing the transparency of the EGRPRA process are meant to be taken as meaning that the risk assessment process provides a formal, yet flexible, process for assessing rules the results of which can be reviewed by both internal auditors, such as the FDIC's Inspector General, as well as outside auditors, such as the Government Accountability Office. In addition, as an analyst goes through the process of assessing a particular rule, the analyst is expected to generate work products that support the conclusions reached. These work products could include copies of email conversations about the rule between the analyst and subject matter experts, conversations about legislative issues relevant to the rule between the analyst and legal staff, data gathered from the Call Report or other regulatory reports identifying the scope of entities affected by the rule, and so on.[21] The analyst's work products and the resulting judgement about the "regulatory risk" of

[21] It may be useful to develop a standardized Regulatory Risk Assessment Worksheet in which the analyst can input pertinent information she learned from the assessment, including relevant data, computer programs, and her

the rule would be available to auditors, FDIC staff and senior management to help them understand both the risk a particular rule is outdated, unnecessary, or unduly burdensome, and how the analyst reached her conclusion with respect to a particular rule.

b. The Regulatory Risk Assessment

The proposed assessment uses 13 qualitative and quantitative criteria to guide an analyst in determining that the risk a particular rule, or rule part, has become outdated, unnecessary, or unduly burdensome relative to the benefits it achieves, is low, medium, or high. Table 1 below lists the 13 criteria, along with the expected values each criterion can take.

conclusion as to the risk that the rule is outdated, unnecessary, or unduly burdensome. Such a worksheet could be modeled after the Regulatory Flexibility Act Worksheets filled out by Regulatory Analysis Section staff, which perform a documentary function of analyses performed pursuant to the Regulatory Flexibility Act. The potential creation of a Regulatory Risk Assessment Worksheet is discussed further in Section III. E.

Table 1

Regulatory Risk Assessment Criteria		
Number	Criterion	Potential Criterion Values
1	Likelihood of Improving the Attainment of Statutory Objectives	Low, Medium, High
2	Scope of the Rule in Terms of the Number of Entities or Volume of Activity It Affects	Number of entities and volume of activity affected
3	Complexity or Compliance Cost Associated With the Rule	Cost ($ amount or Low, Medium, High); Level of complexity (Low, Medium, High)
4	Extent of Reliance on Numerical Thresholds That Are Within Regulatory Discretion to Change and That May Become Less Appropriate as a Result of Inflation, Industry Structure Changes, or Other Factors	Numerical thresholds not present; Numerical thresholds present but no regulatory discretion; Numerical thresholds present and discretion to change
5	Whether the Rule Is FDIC-Only or Joint	Joint rule, FDIC-only
6	Comments the FDIC Receives Through Outreach, Advisory Committees, Written Comment Letters or Other Means	None, few, some, many
7	The Length of Time the Rule Has Been in Effect or Since Last Substantial Revision	Number of years
8	Experience Gained During Periods of Significant Banking Industry Stress	Experience not relevant, is relevant
9	The FDIC Found the Rule Was "Major" for Purposes of the Congressional Review Act	Not major, major
10	The Rule Has Resulted in a Large Number of FDIC Advisory Opinions, Inquiries to the FDIC Call Center, or Inquiries to FDIC Case Managers	Has not, Has {Number}
11	Have Technological, Legislative, Economic, or Other Developments Materially Affected the Rationale for, or Most Effective Ways of Achieving the Goals of, the Rule	No, Yes
12	A Similar Rule Affecting Institutions Whose Primary Federal Regulator Is Not the FDIC Was Repealed or Significantly Modified	No, Yes
13	The FDIC Found the Rule Significantly Affected a Substantial Number of Small Entities for Purposes of the Regulatory Flexibility Act	No, Yes
Risk Classification	Risk That the Rule Has Become Outdated, Unnecessary, or Unduly Burdensome Relative to the Benefits It Achieves	Low, Medium, High

Assessments would be performed by staff of the FDIC’s Division of Insurance and Research (DIR), Regulatory Analysis Section (RAS). The RAS would further serve as the coordinator and record-keeper for the regulatory risk assessments. To perform an assessment, an analyst or economist within the RAS would begin with a qualitative review of the particular rule, or rule part, in question. This qualitative review would include reading the rule from the Code of Federal Regulations, as well as any associated *Federal Register* notices, including at least the most recent Final Rule and its associated Notice of Proposed Rulemaking (NPR), as well as any comment letters received, including those solicited through an EGRPRA review or other outreach and those submitted at the rule's NPR stage. In addition, the RAS analyst would review the statutory background of the rule as well as the relevant legislative history. Depending on the complexity of the legislative issues involved, the RAS analyst may require assistance from the FDIC's Legal Division. Also, the RAS analyst would review academic literature if the literature was relevant, and confer with subject matter and policy experts within the FDIC.

The review discussed above should provide the analyst with a qualitative understanding of the rule, including the statutory objectives of the rule and why it was perceived to be needed, as well as whether subject matter experts believe the rule is working as intended or could be improved. The analyst's qualitative understanding of the rule should provide him or her with at least partial answers for eight of the thirteen assessment criteria. Specifically, by the completion of the qualitative review, the analyst should have an initial impression as to the complexity of the rule, and should know the extent of the rule's reliance on numerical thresholds, whether the rule is joint or FDIC-only, the number of comments received on the rule as well as the content of those comments, the length of time since the rule was last substantially revised, whether experience from periods of significant banking industry stress are informative, and whether there have been significant developments since the rule was issued that suggest the rule may be outdated. Finally, the analyst should know whether a similar rule affecting institutions whose primary federal regulator is not the FDIC was repealed or significantly modified. The analyst may at this point have also formed an impression as to the first criterion, whether the rule can be modified to improve its attainment of statutory objectives. He or she may also have an impression as to the likelihood the rule is outdated, unnecessary, or unduly burdensome.

The next step is a quantitative review of the rule. This quantitative review would include data from previous RAS analyses of the rule which would have been performed at the NPR and Final Rule stages. Previous RAS analyses should have identified the number of affected entities, and have at least some information about the rule's expected benefits and costs, as well as information about the scope of activity affected by the rule. Useful sources of information on the costs and benefits of a particular rule are the Major Rule Determinations and Regulatory Flexibility Act Worksheets produced by the RAS in arguing whether the rule was "major" for purposes of the Congressional Review Act,[22] and whether the rule significantly affected a substantial number of small entities for purposes of the Regulatory Flexibility Act.[23]

In addition, the RAS analyst would request from the relevant business units within the FDIC other potentially useful quantitative information, such as the number of inquiries received by the FDIC's Call Center that relate to subject matter covered by the rule, as well as the number of inquiries received by FDIC Case Managers that relate to subject matter covered by the rule. Also, the analyst can review FDIC Advisory Opinions[24] and FDIC General Counsel's Opinions

[22] In general, the Congressional Review Act (Pub. L. No. 104–121 (1996) and codified at 5 U. S. Code chapter 8) gives Congress the authority to disapprove certain rules issued by federal agencies, including the FDIC. The Act also defines a major rule as a rule which has resulted in or is likely to result in an annual effect on the US economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, or innovation. The FDIC works with the White House Office of Information and Regulatory Affairs to determine whether a rule is "major" according to the Act, with the RAS performing an analysis of the likely economic effects of the rule.
[23] In general, the Regulatory Flexibility Act (Pub. L. No. 96–354 (1980) and codified at 5 U. S. Code chapter 6) requires federal agencies, including the FDIC, to perform and make available for public comment analyses of proposed and final rules to determine whether the rules have a significant impact on a substantial number of small entities.
[24] FDIC Advisory Opinions are nonbinding opinions of FDIC staff lawyers meant to help members of the public better understand the regulations administered by the FDIC. As not all Advisory Opinions are available online, the RAS analyst may benefit from working with FDIC Legal Division staff to determine if there are offline Advisory Opinions relevant to a particular rule.

online and determine the number of such opinions issued that deal with matters pertaining to the rule. By the completion of both the qualitative and quantitative aspects of the review, the analyst should have the basis for an opinion as to the likelihood of improving the attainment of statutory objectives through modification or repeal of the rule.

Once the analyst has completed both the qualitative and quantitative reviews of the rule and formed a solid opinion as to the likelihood of improving the attainment of statutory objectives, he or she is in a position to answer whether the risk the rule is outdated, unnecessary, or unduly burdensome is low, medium, or high.

The regulatory risk assessment described above is meant to be a qualitative guide for the analyst in determining the level of risk that the rule is outdated, unnecessary, or unduly burdensome. That is, as the analyst collects information about the rule as part of obtaining answers to questions raised by the assessment criteria, the analyst is led to a qualitative judgment as to whether the level of risk that the rule is outdated, unnecessary, or unduly burdensome, is low, medium, or high. It is by virtue of going through the process of information gathering about aspects of the rule, guided by the risk assessment criteria, that the analyst is able to form such a judgment as to the "regulatory risk" presented by the rule.

c. The Regulatory Risk Assessment as a Part of the FDIC's Strategy for Reviewing Regulations and Performing Regulatory Analysis

The proposed regulatory risk assessment fits within the FDIC's overall strategy for the development and review of regulations by enhancing the transparency of the FDIC's review of its regulations in a formal process that can be consistently applied across regulations. Furthermore, the proposed risk assessment enhances EGRPRA reviews by providing the FDIC information on which of its regulations are most likely to be outdated, unnecessary, or unduly burdensome, including especially those regulations for which the FDIC received no public comments during an EGRPRA review. In addition, the proposed risk assessment can help the FDIC achieve two broad objectives it outlined in its recent request for information on a framework for analyzing the effects of regulatory actions.

The FDIC's existing policy on the development and review of its regulations was adopted in 1998,[25] and revised in 2013.[26] Both policy statements highlight the importance of periodically reviewing regulations to ensure that they remain current and effective. The 2013 Policy Statement further notes when such reviews may be triggered, such as by a change in a law, as part of an EGRPRA review, or as part of a targeted review based on observations of market changes or other relevant events.[27] In addition, the 2013 Policy Statement specifies four factors to be considered in determining whether a regulation should be revised: "[T]he continued need for the regulation or policy; opportunities to simplify or clarify the regulation or policy; the need to eliminate duplicative and inconsistent regulations and policies; and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation or policy."[28]

Each of the four factors listed are explicitly considered in the regulatory risk assessment outlined above, or would be informed by performing such an assessment. For instance, the first factor listed is whether a regulation is still necessary. While not directly considered as part of the risk assessment process, as an analyst explicitly considers the questions raised by that process, he

[25] FDIC, "Statement of Policy on the Development and Review of Regulations," 63 Fed. Reg. 25157 (May 7, 1998), https://www.govinfo.gov/content/pkg/FR-1998-05-07/pdf/98-12059.pdf, (accessed October 9, 2020).
[26] FDIC, "Statement of Policy on the Development and Review of Regulations and Policies," 78 Fed. Reg. 22771 (April 17, 2013), https://www.govinfo.gov/content/pkg/FR-2013-04-17/pdf/2013-08986.pdf, (accessed October 9, 2020). Hereafter, referred to as the 2013 Policy Statement.
[27] *Id.* Pg. 22773.
[28] *Id.*

or she would likely come to an informed judgment about whether a particular regulation was still necessary.

The second factor listed in the 2013 Policy Statement, "[O]pportunities to simplify or clarify the regulation [],” is informed by the risk assessment's third criterion about the complexity and compliance costs associated with the regulation in question. The need to eliminate duplicative and inconsistent regulations is informed by the risk assessment's criteria as to whether the regulation is FDIC-only or joint, and whether another of the banking regulators has repealed or significantly altered a similar regulation. In addition, as risk assessments on different regulations are collated, analysts and management would develop an FDIC-wide view of regulations, allowing for inconsistent or duplicative regulations issued by the FDIC to be more easily identified. Finally, the last factor listed in the 2013 Policy Statement is equivalent to the risk assessment's eleventh criterion.

Thus, the risk assessment process outlined above encompasses the factors the FDIC has stated it believes are important in evaluating its regulations. Moreover, the risk assessment process provides two additional benefits. One, a formal risk assessment process, consistently applied, enhances the transparency of the FDIC's regulatory review efforts. Two, a risk assessment process enhances EGRPRA reviews by providing the FDIC with information on which of its regulations are most likely to be outdated, unnecessary, or unduly burdensome, especially those regulations for which an EGRPRA review did not result in any public comments.

Finally, in November 2019 the FDIC published a Request for Information to help strengthen the analysis of its regulatory actions.[29] Specifically, the FDIC announced it is considering, "a more structured approach to regulatory analysis," as well as, "improvements to its internal approaches to developing [regulatory] analysis…. [Including] processes for retrospective analysis of the effects of regulations."[30] The proposed regulatory risk assessment helps the FDIC achieve its goal of taking a more structured approach to regulatory analysis, as well as improves its internal processes for highlighting which regulations have the greatest risk of being outdated, unnecessary, or unduly burdensome, and may thus be good candidates for a more thorough retrospective analysis.

d. The Proposed Regulatory Risk Assessment Will Improve EGRPRA Reviews

The proposed regulatory risk assessment process, described above, will improve EGRPRA reviews in at least two ways, and provide an important third benefit. First, the results of the risk assessment process will help better identify which of the FDIC's rules are most likely to be outdated, unnecessary, or unduly burdensome compared with relying so heavily on public comments. Second, by going through the risk assessment process for a particular rule, an analyst develops documentation supporting her conclusion as to the rule's regulatory risk. This documentation can then be relied on by the FDIC to explain why it views particular rules as being more or less likely to be outdated, unnecessary, or unduly burdensome. Third, placing the assessment of rules within the RAS makes it easier for the FDIC to have an agency-wide view of the regulatory risk posed by its rules. These benefits are described in more detail below.

---

[29] FDIC, "Request for Information on a Framework for Analyzing the Effects of FDIC Regulatory Actions," 84 Fed. Reg. 65808 (November 29, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-29/pdf/2019-25928.pdf, (accessed October 9, 2020).

[30] *Id.* Pp. 65808–65809.

The first benefit of adopting the risk assessment process proposed above complements the goal of EGRPRA reviews, which is to identify rules that are outdated, unnecessary, or unduly burdensome, and potentially modify or rescind them. The proposed process would complement the EGRPRA reviews by bringing a separate analytical perspective to bear that would supplement information the FDIC gains from public comments.

The second benefit of adopting the proposed risk assessment process arises from documentation generated as the process is performed by an analyst on a particular rule. By adopting the proposed regulatory risk assessment process, in the event that a rule does not receive any public comments as part of an EGRPRA review, the FDIC would be able to rely on its own internal assessment about the rule's regulatory risk in deciding what should be done with the rule.

Moreover, because all the FDIC's rules will ultimately be assessed by RAS staff at some point during an EGRPRA review, the FDIC will be able to avoid the perception that its EGRPRA reviews are "reactive"[31] because they rely so heavily on public comments. Finally, the placement of the risk assessment process within the RAS allows the RAS to develop and provide an analytical view of the regulatory risk of all of the FDIC's rules.

e. A Schedule for Implementing the Risk Assessment Process and Incorporating it into the Third EGRPRA Review

The first and second EGRPRA reviews provide a sense of the time remaining to implement the risk assessment process before the start of the third EGRPRA review. The first

---

[31] Office of the Inspector General of the FDIC, "Cost Benefit Analysis Process for Rulemaking," https://www.fdicoig.gov/sites/default/files/publications/20-003EVAL.pdf, pg. 27.

EGRPRA review formally began in 2003,[32] and was completed in 2007.[33] The second review formally began in 2014 and was completed in 2017.[34] This suggests that in order to be successfully integrated into the third EGRPRA review, the risk assessment process should be fully implemented by 2023. However, because the risk assessment process may evolve as analysts gain experience applying it, the RAS should implement the process during calendar year 2021.

Prior to implementation, the risk assessment process will need to be reviewed and approved by senior managers within the Division of Insurance and Research (DIR). The review by these individuals may lead to changes in the process, and may also involve the creation of a Regulatory Risk Assessment Worksheet or other work product to be completed by the analyst as part of a risk assessment in order to provide documentary evidence of the work conducted. Given the possibility that the review of the risk assessment process may lead to the creation of other work processes, such as a Worksheet, a maximum of three months is prudent to allocate for review and approval of the assessment.

The risk assessment process described above is not particularly technical or complex, so no or minimal initial training should be required prior to RAS staff being able to perform risk assessments. Existing RAS staff likely already possess the skills necessary to perform risk assessments. However, because the assessment process may evolve as analysts gain experience by applying it, its initial applications should be by senior RAS staff on rules chosen by DIR management. Once analysts have conducted risk assessments on four to six rules that are

[32] Federal Financial Institutions Examination Council, "Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act," July 31, 2007, https://egrpra.ffiec.gov/docs/egrpra-joint-report.pdf, (accessed October 9, 2020), pg. 6.
[33] Federal Financial Institutions Examination Council, "The Economic Growth and Regulatory Paperwork Reduction Act," undated, https://egrpra.ffiec.gov/index.html, (accessed October 9, 2020).
[34] *Id.*

representative of the variety of rules issued by the FDIC, the analysts' feedback may be incorporated into the assessment process. The initial implementation described above should take no more than six months. That it may take up to six months is meant to ensure enough time is allotted to incorporate analysts' feedback, revise the assessment process if necessary, and obtain approval of the revised process. In addition, it may be necessary to assess more than six rules to fully capture the variety of rules issued by the FDIC.

The final phase of implementation involves integrating the risk assessments into the "regular" RAS workflow. Although each FDIC-issued rule need not be assessed during the final phase, each rule that has yet to be assessed should be identified, assigned to an RAS staff member for assessment, and assigned a date by which the assessment should be completed. During this final phase, senior staff who completed the initial assessments may provide guidance on the assessment process to other RAS staff, and may produce training materials if desired. The final phase of implementation should take no more than one month. Once the risk assessment process is fully integrated into the RAS workflow, it can be incorporated into the EGRPRA process.

Based on the schedule outlined above, fully implementing the risk assessment process into the RAS workflow will take 10 months. If begun in June 2021, implementation would be completed in March 2022, leaving at least nine months before the formal start of the third EGRPRA review, estimated to be 2023. If the RAS is assumed to assess no more than six rules during implementation, followed by one rule per month after implementation, then the RAS will have performed risk assessments on 15 rules by the end of 2022. The FDIC has regulatory responsibility for 46 parts of title 12 of the Code of Federal Regulations, excluding those parts relating to FDIC employees, contractors and contracting, regulations governing the FDIC's Board, and regulations transferred from the Office of Thrift Supervision.[35]

While each part can have multiple subparts which may be substantive regulations in their own right, the figures above suggest that the RAS will have assessed a material fraction of the FDIC's existing regulations prior to the formal beginning of the third EGRPRA review in 2023. Assuming a continuing assessment rate of one rule per month implies that the RAS will have assessed between 51 and 63 rules between implementing the risk assessment process and the estimated end of the third EGRPRA review in 2026 or 2027. If the RAS implements the assessment process in 2021 it should be able to assess FDIC regulations in parallel with the third EGRPRA review. The results of the RAS's assessments can be shared with other FDIC business units to inform them of the regulatory risk of rules for which they are responsible and thereby provide information on whether such rules are likely to be outdated, unnecessary, or unduly burdensome in addition to that provided by commenters pursuant to the third EGRPRA review.

IV. Financial Impact of the Risk Assessment on the FDIC

The proposed risk assessment could have financial impacts on the FDIC, on FDIC-insured financial institutions, and on their customers. The financial impact of the risk assessment on banks and their customers is difficult to estimate and likely to be modest. The difficulty in estimating the financial impact of the assessment on banks and their customers arises because changes to the FDIC's rules are not likely to occur solely because of a risk assessment. That is, it may not be possible to distinguish between changes to rules the FDIC makes because of the

[35] FDIC, "Federal Deposit Insurance Corporation Rules And Regulations," August, 31, 2018, https://www.fdic.gov/regulations/laws/rules/2000-50.html, (accessed October 9, 2020). While the FDIC may have regulatory responsibility for 46 parts of title 12, a part may have multiple subparts. Each subpart may be a substantive regulation in its own right. Thus, the count of parts is an undercount of the number of FDIC-issued regulations.

incorporation of the risk assessment into EGRPRA reviews from changes to rules the FDIC would have made by performing EGRPRA reviews without the risk assessment. Also, adoption of the proposed risk assessment is not expected to directly impose any costs on banks or their customers. Therefore, this section focuses only on the financial impact to the FDIC. Potential effects on banks and their customers are presented in Section V., Non-financial Impact.

a. No Additional Expenditures Are Necessary to Adopt the Proposed Risk Assessment

The adoption of the proposed risk assessment need not involve any direct expenditure by the FDIC on either additional staff or other resources, such as equipment, office space, data, or software. This does not imply that adopting the risk assessment has no cost. Rather, the assessment's cost arises from reallocating existing staff and resources from their current projects to producing risk assessments. The cost of reallocating existing staff and resources from their current projects to producing risk assessments is the "opportunity cost" of producing risk assessments, and is estimated below as the cost to the FDIC of employing an Economic Analyst or Senior Financial Economist in the RAS for one year. Because the costs of employing an analyst or economist are likely to be similar whether the staff are new or existing, the estimate of the opportunity cost of risk assessments below can be used by DIR senior management as an estimate of the cost of employing an additional RAS staff member to perform the assessments.

There are two reasons for supposing that adopting the risk assessment process outlined above will not result in additional expenses. The first is that it is unlikely DIR's authorized staff level will be increased solely to perform risk assessments, considering it was just increased in 2020 to support enhanced cost-benefit analysis.[36] The second is that the proposed risk

[36] Edwards, Bret D., "Memorandum from Deputy to the Chairman and Chief Financial Officer Bret D. Edwards to the Board of Directors: Proposed 2020 FDIC Operating Budget," December 12, 2019, https://www.fdic.gov/news/board/2019/2019-12-12-notice-dis-c-mem.pdf, (accessed November 22, 2020), pg. 6.

assessment is meant as a tool which may be performed by current RAS staff using resources already available to them. The resources used by RAS staff to perform other regulatory analyses of FDIC rulemakings, such as information technology equipment, data, and software, can also be used to perform risk assessments. While any new tool likely involves some amount of learning, the proposed risk assessment is not a highly technical or complex task. Existing RAS staff should be able to perform risk assessments without specialized training. Thus, the annual cost to the FDIC of employing either an Economic Analyst or a Senior Financial Economist is used to estimate the annual opportunity cost of adopting the proposed risk assessment by reallocating existing RAS staff and to illustrate the additional cost of the risk assessment should DIR senior management decide to employ an additional staff member to perform assessments.

b. The Proposed Risk Assessment Has No Effect on Revenue

Adopting the proposed risk assessment and integrating it into the EGRPRA review process is not likely to materially affect the FDIC's revenue. The FDIC's revenue is almost entirely composed of deposit insurance assessment income and interest income on U.S. Treasury securities.[37] Although the FDIC's regulations include those which establish premiums for deposit insurance and define the assessment base for insurance purposes, even if risk assessments performed on such rules suggested that the regulatory risks associated with the rules were high, the risk assessments would not themselves suggest particular changes. In other words, a risk assessment may lead an analyst to conclude that a rule or regulation has a high risk of being outdated, unnecessary, or unduly burdensome relative to the benefits it achieves. That is, a risk assessment helps identify rules that are good candidates for more thorough review, but it does

[37] For example, data from the FDIC's 2019 annual report for the calendar years 2018 and 2019 show that more than 99 percent of total revenue in both years is made up of assessment income and interest income. See FDIC, "2019 Annual Report," February 13, 2020, https://www.fdic.gov/about/financial-reports/report/2019annualreport/2019ar-final.pdf, (accessed on November 22, 2020), pg. 93.

not suggest which changes, if any, should be made to those rules. Thus, adopting risk assessments is not likely to alter the FDIC's assessment income, and would not have any effect on interest earned from U.S. Treasury securities in any case.

c. The Proposed Risk Assessment Has a Cost Even If No Additional Staff Are Employed

The risk assessment will impose an opportunity cost on the FDIC, even if no additional staff are hired in order to perform risk assessments. An opportunity cost arises even if no additional staff are hired because existing staff assigned to produce risk assessments will do so instead of the work they would have otherwise performed had they not been assigned to produce risk assessments. That is, even under a supposition of no additional direct expenditure for conducting risk assessments, conducting risk assessments requires reallocating resources from other activities and therefore has an implicit cost, called an opportunity cost.

Because an opportunity cost is a genuine cost, even though it does not appear on a financial statement, and also because DIR senior management may be interested in what it would cost the FDIC to hire an additional staff member to perform risk assessments, the annual cost of employing a staff member is used to represent the opportunity cost of performing risk assessments. A lower bound on the opportunity cost of performing risk assessments is based on the annual cost of employing a staff member at a Corporate Grade (CG) of 12. An upper bound of the opportunity cost is estimated based on the annual cost of employing a staff member at a grade of CG-14. These two grades typically represent the full performance levels of Economic Analysts and Senior Financial Economists within RAS, respectively. The range estimated below is conservative, as Economic Assistants, whose full performance level is typically CG-09, could also be used to perform risk assessments.

An objection is that if no additional staff are hired to perform risk assessments, then it is unlikely that any one individual will spend a year working only on risk assessments. Thus, the annual cost of employing an RAS staff member is not a good estimate of the true opportunity cost of performing risk assessments. Moreover, in producing a risk assessment, RAS staff will probably interact with FDIC staff working in different business units. For simple rules, RAS staff may not make any inquiries of other FDIC staff. For complex rules, RAS staff may ask many questions of other FDIC staff. Estimating the true opportunity cost of producing a risk assessment requires estimating the proportion of the time required of economists, lawyers, case managers, subject matter experts, and potentially other specialized FDIC staff in order for the RAS to produce a risk assessment.

Estimating the true opportunity cost of performing risk assessments is beyond the scope of this project. For tractability, the cost is estimated supposing that the value of the time of the variety of staff which would be engaged in producing risk assessments over the course of a year is approximated by a range bounded from below by the cost of employing a grade CG-12 Economic Analyst and bounded from above by the cost of employing a grade CG-14 Senior Financial Economist for a year. As the vast majority of the true opportunity cost will be due to time spent performing risk assessments by RAS staff, the use of what are typically the full performance levels of Economic Analysts and Senior Financial Economists is appropriate, as these positions make up a majority of non-supervisory RAS staff.[38]

d. The Opportunity Cost of Performing Risk Assessments

The annual opportunity cost of performing risk assessments ranges from a low of $139,952, to a high of $321,090, depending on the grade and tenure of the staff member

[38] Direct observation by the author.

performing the risk assessments (see Table 2 below). The range of the annual opportunity cost equals the range of the annual estimated total compensation cost—salary plus benefits—of employing an RAS staff member located in Washington, DC, at a grade of CG-12 or CG-14. To place the amounts in context, the low estimate is approximately 0.01 percent of the FDIC's 2020 budget for salaries and compensation (excluding the Office of Inspector General and receivership funding), and is roughly one-quarter of one percent of DIR's 2020 operating budget.[39] The high estimate is approximately 0.03 percent of the FDIC's 2020 budget for salaries and compensation, and is roughly one-half of one percent of DIR's 2020 operating budget.[40] The derivation of the range is described below.

The opportunity cost of performing risk assessments for one year is assumed to equal the cost of employing one staff member in Washington, DC, at a grade of CG-12 or CG-14 for one year. The FDIC's 2020 base annual salaries by grade[41] and the location-based cost-of-living adjustments to those salaries are available online.[42] Base annual salaries vary by grade, with an employee at a grade of CG-12 earning base pay ranging from a minimum of approximately $73,000 per year to a maximum of roughly $119,000 per year.[43] An employee at a grade of CG-14 earns annual base pay between approximately $102,000 to just under $167,000.[44] The minimum amounts may be interpreted as what an employee would likely earn if they began federal employment at the respective grade having no prior military or federal service. The maximum values may be interpreted as representing the amounts an employee would earn if they

[39] See Exhibits 1 and 2 of Bret D. Edwards, "Proposed 2020 FDIC Operating Budget," December 12, 2019, https://www.fdic.gov/news/board/2019/2019-12-12-notice-dis-c-fr.pdf, (accessed November 5, 2020).
[40] *Id.*
[41] The 2020 FDIC Base Salary Structures are available at https://www.fdic.gov/about/jobs/2020-cgcmcxem.pdf, (accessed November 5, 2020).
[42] The 2020 FDIC Locality Rates are available at https://www.fdic.gov/about/jobs/2020-localityrates.pdf, (accessed on November 5, 2020).
[43] See 2020 FDIC Base Salary Structures, https://www.fdic.gov/about/jobs/2020-cgcmcxem.pdf.
[44] *Id.*

remained at that grade for many years.[45] Finally, an employee based in Washington, DC, in 2020 would receive a 28.35 percent cost-of-living adjustment added to base pay.[46]

Compensation is more than salary, however. It also includes benefits such as employer-provided health insurance and retirement plans, among other things. A 2012 study by the Congressional Budget Office (CBO) estimates that 39 percent of the compensation cost of federal employees is made up of benefits.[47] If compensation equals salary plus benefits, and benefits equal 39 percent of compensation, then compensation is equal to salary divided by 0.61.[48] Thus, the base salaries listed above for CG-12 and CG-14 employees are divided by 0.61 to incorporate the cost of benefits, and 28.35 percent of the (unadjusted) base salary amounts are added to incorporate the cost-of-living adjustment for the Washington, DC area, as all RAS staff are based in that area.[49] Table 2 below shows the range in total annual compensation costs, and thus the range in the annual opportunity cost, of performing risk assessments based on the FDIC's 2020 base salaries and cost-of-living adjustments and the CBO's estimate of the share of benefits in federal employee compensation.

---

[45] Assuming annual salary increases of 3.1 percent—equal to the FDIC's average annual salary increase in 2020—it would take an employee 17 years to go from earning the minimum CG-12 base salary to earning the maximum.
[46] See 2020 FDIC Locality Rates, https://www.fdic.gov/about/jobs/2020-localityrates.pdf.
[47] Congressional Budget Office, "Comparing the Compensation of Federal and Private-Sector Employees," January 2012, https://www.cbo.gov/sites/default/files/cbofiles/attachments/01-30-FedPay.pdf, (accessed November 5, 2020), pg. 9.
[48] Let compensation (C) equal salary (S) plus benefits (B), or $C = S + B$. Given that benefits equal 39 percent of compensation, $B = 0.39*C$. Thus, $C = S + 0.39*C$, so $0.61*C = S$, or $C = S / 0.61$.
[49] An example showing the adjustment of the minimum base salary for an employee at a grade of CG-12 illustrates the steps in estimating an annual compensation cost. The salary table listed at Note 41 lists the minimum CG-12 annual base salary in 2020 as $72,784. The Washington, DC, cost-of-living adjustment to that salary equals (0.2835)*$72,784, or $20,634, and the cost-of-living adjustment is available from the table listed in Note 42. To incorporate an estimate of the cost of non-salary benefits, the minimum base salary is divided by 0.61. $72,784 divided by 0.61 equals $119,318. The total annual cost of compensation of an FDIC employee earning the minimum CG-12 base salary in Washington, DC, is thus estimated as $20,634 plus $119,318, which equals $139,952.

Table 2

2020 FDIC Annual Costs of Compensation for Washington, DC, Based Staff at Grades CG-12 and CG-14			
Grade	Minimum	Midpoint	Maximum
CG-12	$139,952	$184,230	$228,505
CG-14	$196,659	$258,874	$321,090
Note: Compensation costs include an estimate of the cost of non-salary benefits. Staff salaries are therefore less than the amounts reported in the table. Note 48 in the text describes how compensation is estimated from salary and benefits data, and Note 49 provides an example. Sources: 2020 FDIC Base Salary Structures, available at https://www.fdic.gov/about/jobs/2020-cgcmcxem.pdf, and 2020 FDIC Locality Rates, available at https://www.fdic.gov/about/jobs/2020-localityrates.pdf. The Congressional Budget Office report, "Comparing the Compensation of Federal and Private-Sector Employees," is available at https://www.cbo.gov/sites/default/files/cbofiles/attachments/01-30-FedPay.pdf.			

The amounts in the "Minimum" column of Table 2 most closely estimate the cost of hiring a new staff member to perform risk assessments, as a new staff member is most likely to begin at the "bottom" of a pay grade. Amounts between the "Minimum" and the "Midpoint" values most closely estimate the annual opportunity cost of performing risk assessments by reassigning existing staff. Finally, amounts near the "Maximum" values represent the opportunity cost of using staff with long employment tenures to perform risk assessments. The true annual opportunity cost and the true annual cost of employing a new staff member are likely within the range outlined in Table 2. However, the true cost may be below the range if, for example, more junior staff at pay grades lower than CG-12 are used to perform most risk assessments. The true cost could be above the range if, for example, the share of benefits in total compensation is higher than 39 percent.[50]

V. Non-Financial Impacts of the Risk Assessment

The non-financial, or qualitative, impacts of the risk assessment generally belong to the category of impacts described by the phrase "good government." These types of impacts, represented by phrases such as "increased transparency," are difficult or impossible to measure, but are no less important than the financial impact, described above. In fact, most benefits of the proposed risk assessment are likely to be qualitative. However, the qualitative benefits justify performing risk assessments even considering the cost described in Section IV.

The risk of the proposed assessment is that it provides no benefits. However, even under a "worst case" scenario in which undertaking risk assessments results in no benefits arising from the assessments themselves, performing risk assessments has the clear benefit of satisfying part of the FDIC Inspector General's recommendation that the FDIC, "Establish, document, and implement policy and procedures for conducting retrospective cost benefit analyses on existing rules, including a regulatory risk assessment…."[51] Also, it is unlikely that performing risk assessments will have no benefits, even if most of the benefits are qualitative.

[50] The present value of compensation costs were also calculated over a 10 year horizon, as 10 years is the "lookback period" for an EGRPRA review. Assuming base salaries increase 3.1 percent per year, the Washington, DC, cost-of-living adjustment increases 0.5 percent per year, and benefits remain a fixed 39 percent of compensation, at a 3 percent discount rate the present value of the cost of performing risk assessments for 10 years ranges from $1,343,311 to $3,081,934, or between $134,331 and $308,193 per year on average. At a discount rate of 7 percent the present value of the cost of performing risk assessments for 10 years ranges from $1,096,734 to $2,516,217, or between $109,673 and $251,622 per year on average. Discount rates of 3 and 7 percent were chosen because they are recommended for regulatory impact analyses (See Office of Information and Regulatory Affairs, "Regulatory Impact Analysis: A Primer," undated, https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf, accessed November 25, 2020, pg. 11.). The amounts presented in Table 2 are greater than each respective discounted annual average amount. For example, the annual cost of a CG-12 employee shown in the Minimum column of Table 2 is $139,952, while the annual average discounted amount is $109,673 at a 7 percent discount rate, and is $134,331 at a 3 percent discount rate. The undiscounted figures based on 2020 FDIC salary and locality rates are used as they are the most conservative estimates.

[51] Office of the Inspector General of the FDIC, "Cost Benefit Analysis Process for Rulemaking," https://www.fdicoig.gov/sites/default/files/publications/20-003EVAL.pdf, pg. 31.

As it is unlikely that performing risk assessments has no benefits, the question for decision makers—setting to one side the Inspector General's recommendation—is whether the qualitative benefits of risk assessments justify their opportunity cost outlined in Section IV. Conservatively, the annual opportunity cost of performing risk assessments ranges between about $140,000 and $321,000. Even if the cost is closer to the high end of the range, the qualitative benefits of performing risk assessments are likely to justify doing so. The proposed risk assessment is an additional tool in the FDIC's cost-benefit program, helps the FDIC achieve some of its goals for strengthening regulatory analysis outlined in its November 2019 Request for Information,[52] enhances the EGRPRA review process as described above, and provides another way for the FDIC to help identify which of its rules are most likely to be outdated, unnecessary, or unduly burdensome than relying on public comments. These qualitative benefits justify the cost of performing risk assessments.

VI. Conclusion

The proposed risk assessment satisfies the FDIC Inspector General's recommendation that the FDIC, "Establish, document, and implement policy and procedures for conducting retrospective cost benefit analyses on existing rules, including a regulatory risk assessment…."[53] Furthermore, the risk assessment enhances EGRPRA reviews by providing the FDIC information on which of its regulations are most likely to be outdated, unnecessary, or unduly burdensome, including especially those regulations for which the FDIC received no public comments during an EGRPRA review. Additionally, the risk assessment helps the FDIC achieve its goals for strengthening regulatory analysis and is another tool which the FDIC can use to assess whether

---

[52] FDIC, "Request for Information on a Framework for Analyzing the Effects of FDIC Regulatory Actions," https://www.govinfo.gov/content/pkg/FR-2019-11-29/pdf/2019-25928.pdf.
[53] Office of the Inspector General of the FDIC, "Cost Benefit Analysis Process for Rulemaking," https://www.fdicoig.gov/sites/default/files/publications/20-003EVAL.pdf, pg. 31.

its rules are well suited to meeting their statutory objectives. Also, the qualitative benefits of the risk assessment justify its relatively modest cost. Therefore, the FDIC should adopt the proposed risk assessment. To ensure the risk assessment is integrated into the RAS workflow prior to the start of the third EGRPRA review, it should be adopted in calendar year 2021.

VII. Bibliography

Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

— "Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996."

— 79 Fed. Reg. 32172 (June 4, 2014). https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12741.pdf. (Accessed June 23, 2020).

— 80 Fed. Reg. 7980 (February 13, 2015). https://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf. (Accessed June 23, 2020).

— 80 Fed. Reg. 32046 (June 5, 2015). https://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13749.pdf. (Accessed June 23, 2020).

— 80 Fed. Reg. 79724 (December 23, 2015). https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32312.pdf. (Accessed June 23, 2020).

Congressional Budget Office. "Comparing the Compensation of Federal and Private-Sector Employees." (January 2012). https://www.cbo.gov/sites/default/files/cbofiles/attachments/01-30-FedPay.pdf. (Accessed November 5, 2020).

Edwards, Bret D.

— "Memorandum from Deputy to the Chairman and Chief Financial Officer Bret D. Edwards to the Board of Directors: Proposed 2020 FDIC Operating Budget." (December 12, 2019). https://www.fdic.gov/news/board/2019/2019-12-12-notice-dis-c-mem.pdf. (Accessed November 22, 2020).

— "Proposed 2020 FDIC Operating Budget." (December 12, 2019). https://www.fdic.gov/news/board/2019/2019-12-12-notice-dis-c-fr.pdf. (Accessed November 5, 2020).

Federal Deposit Insurance Corporation.

— "2019 Annual Report." (February 13, 2020). https://www.fdic.gov/about/financial-reports/report/2019annualreport/2019ar-final.pdf. (Accessed on November 22, 2020).

— "Federal Deposit Insurance Corporation Rules And Regulations." (August 31, 2018). https://www.fdic.gov/regulations/laws/rules/2000-50.html. (Accessed October 9, 2020).

— "Request for Information on a Framework for Analyzing the Effects of FDIC Regulatory Actions." 84 Fed. Reg. 65808 (November 29, 2019).

https://www.govinfo.gov/content/pkg/FR-2019-11-29/pdf/2019-25928.pdf. (Accessed October 9, 2020).

— "Statement of Policy on the Development and Review of Regulations." 63 Fed. Reg. 25157 (May 7, 1998). https://www.govinfo.gov/content/pkg/FR-1998-05-07/pdf/98-12059.pdf. (Accessed October 9, 2020).

— "Statement of Policy on the Development and Review of Regulations and Policies." 78 Fed. Reg. 22771 (April 17, 2013). https://www.govinfo.gov/content/pkg/FR-2013-04-17/pdf/2013-08986.pdf. (Accessed October 9, 2020).

Federal Financial Institutions Examination Council.

— "Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act." (July 31, 2007). https://egrpra.ffiec.gov/docs/egrpra-joint-report.pdf. (Accessed October 9, 2020).

— "Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act." (March 2017). https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf. (Accessed June 23, 2020).

— "The Economic Growth and Regulatory Paperwork Reduction Act." Undated. https://egrpra.ffiec.gov/index.html. (Accessed October 9, 2020).

— "The Economic Growth and Regulatory Paperwork Reduction Act of 1996: 12 USC § 3311." Undated. https://egrpra.ffiec.gov/about/the-law.html. (Accessed August 25, 2020).

McLaughlin, Patrick, Oliver Sherouse, and Stephen Strosko. "Regulatory Accumulation in the Financial Sector." Mercatus Center at George Mason University (2020). https://www.quantgov.org/financial-accumulation. (Accessed August 25, 2020).

Office of Information and Regulatory Affairs. "Regulatory Impact Analysis: A Primer." Undated. https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf. (Accessed November 25, 2020).

Office of the Inspector General of the Federal Deposit Insurance Corporation. "Cost Benefit Analysis Process for Rulemaking." (February 2020). https://www.fdicoig.gov/sites/default/files/publications/20-003EVAL.pdf. (Accessed June 18, 2020).