

## **Center for Regulatory Effectiveness**

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March 31, 2008

The Honorable Luis V. Gutierrez, Chairman  
Subcommittee on Domestic and International  
Monetary Policy, Trade, and Technology  
Rayburn House Office Building  
Washington, DC 20515

The Honorable Ron Paul, Ranking Member  
Subcommittee on Domestic and International  
Monetary Policy, Trade, and Technology  
Rayburn House Office Building  
Washington, DC 20515

### **Re: Congressional Request for Information on the UIGEA Rulemaking**

Dear Representatives Gutierrez and Paul:

I am writing in response to your request for information regarding the importance of the Paperwork Reduction Act and the Regulatory Flexibility Act with respect to the UIGEA rulemaking.

Before discussing the central role of these statutes in governing the rulemaking process, I would like to provide you with some background information about myself. I worked for five Administrations, both Democratic and Republican, for four of these I served as a policy official in OMB. With respect to the PRA, I was one of the officials in the Administration who worked with Congress on passage of the Act. I was also the first career official in charge of the PRA's implementation.

### **Paperwork Reduction Act**

In drafting the PRA, Congress recognized the importance of having a structured system for reviewing the paperwork burdens associated with proposed rules. Of particular concern with respect to the UIGEA proposed rule are the unfunded mandates the proposal would place on the banking system. Moreover, these mandates go far beyond the usual reporting and recordkeeping burdens to include such fundamental issues as interpreting federal and state laws and renegotiating international business agreements. Not surprisingly, many of the proposed burdens would fall on small businesses.

We are pleased that, in response to the agencies' request for OMB approval under the PRA, OMB responded by stating that:

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*OMB is withholding approval at this time. Prior to publication of the final rule, the agency should provide a summary of any comments related to the information collection and their response, including any changes made to the ICR as a result of comments.*

Although this action by OMB is not a final agency action, it does constitute the views of OMB at the time of its review, February 1, 2008, namely that OMB expects Treasury to give serious consideration to the public's comments on the ICR prior to submitting the revised document to OMB for final review. To assist Treasury, CRE provided the agency, in response to their request for comments on the ICR, a ten page submission detailing specific examples of how the ICR failed to comply with the requirements of the PRA including:

- 1) Not identifying many of the types of paperwork burdens that would be required by the proposed rule;
- 2) Not evaluating the burden on banks of determining and disclosing to third-parties the restricted transactions that must be blocked; and
- 3) Not estimating the costs associated with each of the paperwork-related burdens.

### **Regulatory Flexibility Act**

With respect to the Regulatory Flexibility Act, the US Small Business Administration's Office of Advocacy explained to the Treasury Department and Federal Reserve System, that the agencies "have not analyzed properly the full economic impact of the proposal on small entities as required by the Regulatory Flexibility Act (RFA)." Types of small business adversely impacted by the proposed rule include money transmitting businesses, such as those represented by the Money Services Round Table, as well as small banks, thrifts and credit unions.

The SBA's comments concluded by stating:

*Advocacy encourages the agencies to prepare and publish for public comment a revised IRFA to determine the full economic impact on small entities; identify duplicative, overlapping or conflicting regulations; and consider significant alternatives to meet its objective while minimizing the impact on small entities before going forward with the final rule.*

### **Conclusion**

Both of the agencies that Congress charged with overseeing enforcement of laws to protect small businesses and the general public in the rulemaking process have concluded that the proposed rule is critically deficient.

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Therefore, CRE concludes that there are systemic flaws in this rulemaking that can only be rectified, as required by statute, by a re-proposal of the rule for public comment.

Sincerely,

/s/

Jim Tozzi

Member, Board of Advisors