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April 15, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation: Regulatory Capital Rule: Eligible Retained Income*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation (the agencies) entitled “Regulatory Capital Rule: Eligible Retained Income” (RINs: 1557-AE81, 7100-AF77, 3064-AF40). We received the rule on May 1, 2020. It was published in the *Federal Register* as an interim final rule with request for comments on March 20, 2020. 85 Fed. Reg. 15909. The effective date of the rule is March 20, 2020. The agencies held a comment period which ended May 4, 2020.

According to the agencies, the interim final rule revises the definition of eligible retained income for all depository institutions, bank holding companies, and savings and loan holding companies subject to the agencies’ capital rule (together, a banking organization or banking organizations). The agencies stated the revised definition of eligible retained income will make any automatic limitations on capital distributions that could apply under the agencies’ capital rules more gradual. The agencies further stated this action is taken in light of the disruptions in economic conditions caused by the coronavirus disease 2019 (COVID-19).

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). The agencies determined they had good cause to waive the 60-day delay because the spread of COVID–19 has disrupted economic activity in

the United States. In addition, the agencies stated U.S. financial markets have featured extreme levels of volatility and the magnitude and persistence of COVID-19 on the economy remain uncertain. In light of the current market uncertainty, the agencies stated banking organizations may have a strong incentive to limit their lending activity in order to avoid facing abrupt restrictions on distributions. By making the automatic limitations on a banking organization's distributions more gradual as the banking organization's capital ratios decline, the agencies determined the interim final rule would allow banking organizations to focus on continuing to lend to creditworthy households and businesses rather than on managing their capital buffers and reducing the potential of exacerbating negative impacts on the financial markets.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Shaquita Merritt
Program Specialist, Chief Counsel's Office
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMPTROLLER OF THE CURRENCY;
FEDERAL RESERVE SYSTEM;
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
“REGULATORY CAPITAL RULE: ELIGIBLE RETAINED INCOME”
(RINs: 1557-AE81, 7100-AF77, 3064-AF40)

(i) Cost-benefit analysis

In their submission to us, the Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation (the agencies) indicated that they did not prepare an analysis of the costs and benefits of this final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The agencies concluded the requirements of the RFA do not apply to the interim final rule because they did not publish a proposed rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Because they waived notice and comment procedures for good cause, the agencies stated they did not prepare an economic analysis under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The agencies waived notice and comment procedures for good cause. The agencies determined they had good cause because the spread of the Coronavirus Disease 2019 (COVID-19) has disrupted economic activity in the United States. In addition, the agencies stated U.S. financial markets have featured extreme levels of volatility and the magnitude and persistence of COVID-19 on the economy remain uncertain. In light of the current market uncertainty, the agencies stated banking organizations may have a strong incentive to limit their lending activity in order to avoid facing abrupt restrictions on distributions. By making the automatic limitations on a banking organization’s distributions more gradual as the banking organization’s capital ratios decline, the agencies determined the interim final rule would allow banking organizations to focus on continuing to lend to creditworthy households and businesses rather than on managing their capital buffers and reducing the potential of exacerbating negative impacts on the financial markets. However, the agencies did hold a comment period, which ended on May 4, 2020.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The agencies determined the interim final rule impacts current information collection requirements (ICRs) subject to the Act. The impacted ICRs are associated with the Consolidated Reports of Condition and Income, FFIEC 031, FFIEC 041, and FFIEC 051. The ICRs are also associated with Office of Management and Budget (OMB) Control Numbers 1557-0081; 3064-0052; and 7100-0036. The agencies estimated the change to the calculation of retained income should be minimal and result in a zero net change in hourly burden under the ICRs. The agencies stated they will submit the ICRs to OMB.

Statutory authorization for the rule

The agencies promulgated the interim final rule pursuant to sections 93a, 161, 248, 321-338a, 481-486, 1462, 1462a, 1463, 1464, 1467a, 1815, 1816, 1818, 1819, 1828, 1828 note, 1831n, 1831n note, 1831o, 1831p-1, 1831w, 1835, 1844, 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371, 5371 note, and 5412 of title 12; and section 78o-7 note of title 15, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As independent regulatory agencies, the agencies are not subject to the Order.

Executive Order No. 13,132 (Federalism)

As independent regulatory agencies, the agencies are not subject to the Order.