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July 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; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency: Margin and Capital Requirements for Covered Swap Entities*

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; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency (the agencies) entitled “Margin and Capital Requirements for Covered Swap Entities” (RINs: 1557–AE69; 7100–AF62; 3064–AF08; 3052–AD38; 2590–AB03). We received the rule on July 2, 2020. It was published in the *Federal Register* as a final rule on July 1, 2020. 85 Fed. Reg. 39754. The final rule has an effective date of August 31, 2020.

According to the agencies, the final rule amends the agencies’ regulations requiring swap dealers and security-based swap dealers under the agencies’ respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule). The agencies stated the Swap Margin Rule as adopted in 2015 takes effect under a phased compliance schedule spanning from 2016 through 2020, and the entities covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. The agencies decided such swaps are grandfathered from the Swap Margin Rule’s requirements until they expire according to their terms. The agencies also stated the final rule permits swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate or other discontinued rate, modifies initial margin requirements for non-cleared swaps between affiliates, introduces an additional compliance date for initial margin requirements, clarifies the point in time at which trading documentation must be in place, permits legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional

reductions, or portfolio compression exercises, and makes technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the Qualified Financial Contract Rules. In addition, the agencies stated the final rule addresses comments received in response to the agencies' publication of the interim final rule that would preserve the status of legacy swaps meeting certain criteria if the United Kingdom withdraws from the European Union without a negotiated settlement agreement.

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;
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM;
FEDERAL DEPOSIT INSURANCE CORPORATION;
FARM CREDIT ADMINISTRATION;
FEDERAL HOUSING FINANCE AGENCY
ENTITLED
“MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES”
(RINs: 1557–AE69; 7100–AF62; 3064–AF08; 3052–AD38; 2590–AB03)

(i) Cost-benefit analysis

The Department of the Treasury, Office of the Comptroller of the Currency (OCC) prepared an analysis of the costs and benefits of the final rule, promulgated in conjunction with the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the Federal Housing Finance Agency (FHFA) (collectively, the agencies). OCC estimated the final rule would lead to \$807 million in increased profits for regulated entities due to a shift in investment to higher yield assets. However, OCC stated this shift in higher yield assets would lead to an increased cost of \$71 million in acquiring these assets. OCC estimated this would be a net economic benefit of \$736 million.

OCC also stated the elimination of the Inter-Affiliate Initial Margin Requirement would create a \$28.86 billion benefit for regulated entities.

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

The agencies certified the final rule would not have a significant economic impact on a substantial number of small entities.

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

The agencies determined that the final rule would not result in expenditures by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$157 million (\$100 million, adjusted for inflation) in any one year.

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

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

On November 7, 2019, the agencies published a proposed rule. 84 Fed. Reg. 59970. The agencies received approximately 20 comments on the proposal, from U.S. financial institutions, public interest groups, trade associations, academic institutions, and other interested parties. The agencies addressed comments in the final rule.

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

The agencies determined the final rule contains information collection requirements (ICRs) subject to the Act. The ICRs have been submitted to the Office of Management and Budget (OMB) for review, or have been reviewed by the Board under its delegated authority, and are associated with OMB control numbers 1557–0251, 3064–0204, and 7100–0364. The agencies provided different estimated burdens based on each jurisdiction. For entities under OCC jurisdiction, the burden estimate is 14,900 hours annually. For entities under Board jurisdiction, the burden estimate is 61,104 hours annually. For entities under FDIC jurisdiction, the burden estimate is 1,490 hours annually.

Statutory authorization for the rule

The agencies promulgated the final rule pursuant to section 6s of title 7; sections 1 *et seq.*, 93a, 161, 221 *et seq.*, 343—350, 481, 1461 *et seq.*, 1813, 1818, 1819, 1841 *et seq.*, 2154, 2243, 2252, 2279bb-1, 3101 *et seq.*, 3907, 3909, 4513, 4526, 5412 of title 12; and sections 78o-10 and 8305 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.