

441 G St. N.W.
Washington, DC 20548

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March 19, 2021

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairwoman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury: Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends*

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 (Treasury) entitled “Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends” (RIN: 1505-AC76). We received the rule on March 9, 2021. It was published in the *Federal Register* as an interim final rule (IFR) and request for public comment on March 9, 2021. 86 Fed. Reg. 13449. The effective date is March 9, 2021.

According to Treasury, section 104A of the Community Development Banking and Financial Institutions Act of 1994, which was added by the Consolidated Appropriations Act, 2021, establishes the Emergency Capital Investment Program to support capital investments in low- and moderate-income community financial institutions. Consolidated Appropriations Act, 2021 Pub. L. No. 116-260, sec. 522, §104A, 134 Stat 1182, 2079–2088 (Dec. 27, 2020), 12 U.S.C. 4701–4719 (the Act). Treasury stated that the program is available to eligible minority depository institutions and community development financial institutions that are insured depository institutions, bank holding companies, savings and loan holding companies, or federally insured credit unions. Treasury also stated that under section 104A if the Act, the Secretary of the Treasury is required to issue rules setting restrictions on executive compensation, share buybacks, and dividend payments for recipients of capital investments under the program. Treasury stated further that this IFR establishes these restrictions.

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. §§ 553(b)(3)(B), 808(2). Treasury stated that it has presented good cause, in sections I and II of this IFR's supplementary information, to justify its determination that the 60-day delay to provide public notice is impracticable and contrary to the public interest. Treasury noted in sections I and II of the supplement that the Emergency Capital Investment Program is intended to be used to make investments in low- and moderate-income community financial institutions expeditiously. Treasury stated that section 104A(h) of the Act requires it to issue rules no later than 30 days after the statute's effective date. Treasury also stated that this legislative mandate, along with the dramatic and ongoing effects of the COVID-19 pandemic—the public health crisis, continuing closures of small businesses and minority-owned businesses, and heightened consumer unemployment, especially in low-income and underserved communities—provides good cause for it to issue this interim final rule without delaying the effective date or providing advance notice and public comment.

Enclosed is our assessment of Treasury's 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, reading "Shirley A. Jones". The signature is fluid and cursive, with the first name "Shirley" being more prominent and the last name "Jones" following in a similar style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen
Senior Legal Advisor for
Regulatory Affairs
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
ENTITLED
“EMERGENCY CAPITAL INVESTMENT PROGRAM—RESTRICTIONS ON
EXECUTIVE COMPENSATION, SHARE BUYBACKS, AND DIVIDENDS”
(RIN: 1505-AC76)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury (Treasury) indicated that it considered preparation of an analysis of the costs and benefits of this interim final rule (IFR) to be not applicable.

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

According to Treasury, because no notice of proposed rulemaking is required for this IFR, the provisions of the RFA do not apply.

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

In its submission to us, Treasury indicated that it considered preparation of an Unfunded Mandates Reform Act analysis for this interim final rule (IFR) to be not applicable.

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

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

According to Treasury, this IFR is exempt from the rulemaking requirements of the Administrative Procedure Act, including the requirement to provide prior notice and an opportunity for public comment, for the good cause shown in sections I and II of this IFR’s supplementary information. Treasury noted in sections I and II of the supplement that the Emergency Capital Investment Program is intended to be used to make investments in low- and moderate-income community financial institutions expeditiously. Treasury stated that section 104A(h) of the Community Development Banking and Financial Institutions Act of 1994 requires it to issue rules, no later than 30 days after the statute’s effective date. Treasury also stated that this legislative mandate, along with the dramatic and ongoing effects of the COVID-19 pandemic—the public health crisis, continuing closures of small businesses and minority-owned businesses, and heightened consumer unemployment, especially in low-income and underserved communities—provides good cause for it to issue this interim final rule without advance notice and public comment or a delay in the effective date. Treasury stated further that it is soliciting comment from the public on all aspects of this IFR and that it will consider these comments and the need for making any revisions as a result of these comments.

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

Treasury determined that this IFR contains information collection requirements under the Act. According to Treasury this IFR will add current information collections for excessive or luxury expenditure policy and exemptive relief requests to the Emergency Capital Investment Program application process. Treasury stated that the addition of these collections will increase the total annual burden by 44,014 hours. Specifically, Treasury stated the policy requirements are expected to take 1,100 respondents 40 hours to complete for an annual burden of 44,000 hours, and it is estimated that 55 (or 5 percent) of respondents will submit an exemptive relief request that will take 15 minutes to complete, for an annual burden of 14 hours. The Office of Management and Budget Control Number for this information collection is 1505-0267.

Statutory authorization for the rule

Treasury promulgated this IFR pursuant to sections 4701-4719 of title 12, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

According to Treasury this IFR is economically significant. Treasury stated, however, that it is proceeding under the emergency provision at Executive Order 12866, section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency, as discussed in section II of the Supplementary Information in this IFR.

Executive Order No. 13132 (Federalism)

According to Treasury, this IFR does not have federalism implications. Treasury stated that this IFR will not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government, as specified in the executive order.