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August 5, 2015

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

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
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; Farm Credit Administration; National Credit Union Administration: Loans in Areas Having Special Flood Hazards*

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 (OCC); Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); National Credit Union Administration (NCUA) (collectively, the agencies) entitled “Loans in Areas Having Special Flood Hazards” (RINs: 1557-AD84; 7100 AE-22; 3064-AE27; 3052-AC93; 3133-AE40). We received the rule on July 24, 2015. It was published in the *Federal Register* as a final rule on July 21, 2015. 80 Fed. Reg. 43,216. The effective date of amendatory instructions 1, 6, 7, 8, 10, 15, 16, 21, and 22 is October 1, 2015. The effective date of amendatory instructions 2, 3, 4, 5, 9, 11, 12, 13, 14, 17, 18, 19, 20, 23, 24, 25, and 26 is January 1, 2016.

The final rule amends regulations regarding loans in areas having special flood hazards to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which itself amends some of the changes to the Flood Disaster Protection Act of 1973 mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). Specifically, the final rule requires the escrow of flood insurance payments on residential improved real estate securing a loan, consistent with the changes set forth in HFIAA. The final rule also incorporates an exemption in HFIAA for certain detached structures from the mandatory flood insurance purchase requirement. Furthermore, the final rule implements the provisions of Biggert-Waters related to the force placement of flood insurance. Finally, the final rule integrates OCC's flood insurance regulations for national banks and federal savings associations. The agencies state that they plan to address the private flood insurance provisions in Biggert-Waters in a separate rulemaking.

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. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

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Enclosure

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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;  
FARM CREDIT ADMINISTRATION;  
NATIONAL CREDIT UNION ADMINISTRATION  
ENTITLED  
“LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS”  
(RINs: 1557-AD84; 7100 AE-22; 3064-AE27; 3052-AC93; 3133-AE40)

(i) Cost-benefit analysis

The Office of the Comptroller of the Currency (OCC), estimated that the total costs associated with this final rule will range from approximately \$25.1 million to approximately \$30.8 million in 2015 and from approximately \$13 million to approximately \$16 million in 2016. The Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) did not analyze the costs and benefits of this final rule. There was no discussion of any benefits associated with the final rule.

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

OCC, FDIC, FCA, and NCUA, respectively, certified that the final rule will not have a significant economic impact on a substantial number of small entities. OCC stated that therefore, a regulatory flexibility analysis is not required. Furthermore, the Board stated that it believes that the final rule will 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

OCC estimated that the total costs associated with this final rule will range from approximately \$25.1 million to approximately \$30.8 million in 2015 and from approximately \$13 million to approximately \$16 million in 2016. However, the rule states that pursuant to section 201 of UMRA, a regulation does not impose a mandate to the extent it incorporates requirements “specifically set forth in the law.” Therefore, the agencies excluded from UMRA estimate, costs specifically related to requirements set forth in Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) and Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), such as direct costs associated with establishing escrow accounts. Furthermore, the rule states that under title II of UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA’s cost threshold. Therefore, based on these exclusions, the UMRA cost estimate for the final rule ranges from approximately \$24.4 million to approximately \$26.3 million. Accordingly, because OCC determined that this final rule would not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more, OCC stated that they have not prepared a budgetary impact statement

or specifically addressed the regulatory alternatives considered. The agencies are independent regulatory agencies and are not subject to UMRA.

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

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

On October 30, 2013, the agencies jointly published in the *Federal Register*, a proposed rule to implement certain provisions of the Biggert-Waters. 78 Fed. Reg. 65,108 (Oct. 30, 2013). In March 2014, the President signed into law HFIAA, which amends some of the changes made by Biggert-Waters to the Flood Disaster Protection Act (FDPA). The agencies subsequently jointly published in the *Federal Register*, a proposed rule on October 30, 2014, to implement the provisions in HFIAA over which they have jurisdiction. 79 Fed. Reg. 64,518 (Oct. 30, 2014). The agencies state that they plan to address the private insurance provisions of the October 2013 Proposed Rule in a separate rulemaking. The agencies state that in connection with the issuance of this final rule, they have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain provisions of the flood insurance statutes. The agencies state that they received 81 written comments on the October 2013 Proposed Rule and 52 written comments on the October 2014 Proposed Rule. Between the two proposed rules, the agencies reported that they received comments from a wide range of commenters, such as: financial institutions (including banks, credit unions, and farm credit institutions); various trade associations (including bankers' trade associations, credit union trade associations, a farm credit trade association, home building and realtor trade associations, and a flood hazard determination trade association); the insurance industry (including insurance companies, trade associations, and brokers); individuals; public interest/consumer advocates; state insurance regulators; and a municipal government. In addition to receiving written comments, the agencies state that they conferred with several stakeholders in the flood insurance community, including state insurance regulators, the National Association of Insurance Commissioners staff, and Federal Emergency Management Agency staff.

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

OCC, the Board, FDIC, and NCUA (the four PRA agencies) have determined that this final rule involves a collection of information pursuant to the provisions of PRA. The Board stated further that, as permitted by PRA, it extends for 3 years its respective information collection. FCA states that it determined that the final rule does not involve a collection of information pursuant to PRA for system institutions because system institutions are federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. § 3502(3). OCC, FDIC, and NCUA submitted the information collection requirements to the Office of Management and Budget (OMB) in connection with the proposal. The Board's OMB control number is 7100-0280, and FDIC, OCC, and NCUA state that they will seek new OMB control numbers. OMB filed a comment pursuant to 5 C.F.R. § 1320.11(c) instructing the agencies to examine public comment in response to the proposal and describe in the supporting statement of its next collection (the final rule) any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation and include the draft final rule in its next submission. According to the agencies, there were no comments received regarding the collection. The agencies have resubmitted the collection to OMB in connection with the final rule. The total estimated burden represents averages for all respondents regulated by the four PRA agencies. The four PRA agencies expect that the amount of time required to implement each of the changes for a given institution may vary

based on the size and complexity of the respondent. The four PRA agencies provided summaries as follows:

- OCC provided the following information: number of respondents: 1,550; burden for existing recordkeeping requirements: 21,700 hours; burden for existing disclosure requirements: 23,250 hours; burden added by final rule: 62,000 hours; total burden for collection for final rule: 106,950 hours.
- The Board provided the following information: number of respondents: 850; burden for existing recordkeeping requirements: 14,308 hours; burden for existing disclosure requirements: 17,780 hours; burden added by final rule: 34,000 hours; total burden for collection for final rule: 66,088 hours.
- FDIC provided the following information: number of respondents: 4,103; burden for existing recordkeeping requirements: 57,442 hours; burden for existing disclosure requirements: 71,474 hours; burden added by final rule: 164,120 hours; total burden for collection for final rule: 293,036 hours.
- NCUA provided the following information: number of respondents: 4,033; burden for existing recordkeeping requirements: 47,892 hours; burden for existing disclosure requirements: 59,824 hours; burden added by final rule: 161,320 hours; total burden for collection for final rule: 269,036 hours.

The four PRA agencies invited comments on: (1) whether the proposed collection of information is necessary for the proper performance of the four PRA agencies' functions; including whether the information has practical utility; (2) the accuracy of the four PRA agencies' estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Statutory authorization for the rule

The final rule is authorized by sections 102(b), 102(c) and 102(d) of the Flood Disaster Protection Act (42 U.S.C. 4012a(b), 4012a(c), and 4012a(d)), as amended by the Homeowner Flood Insurance Affordability Act of 2014.

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

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

#### Executive Order No. 13,132 (Federalism)

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