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January 27, 2016

Congressional Committees

Banking: Federal Agencies' Compliance with Section 302 of the Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires federal banking agencies to consider any administrative burdens of a regulation and its benefits when determining the effective date and administrative compliance requirements for certain new rules.¹ The federal banking agencies subject to section 302 are the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Office of the Comptroller of the Currency (OCC). Section 302 of the Riegle Act covers only those rules that impose additional reporting, disclosure, or other requirements on insured depository institutions.

Section 302 also requires that these rules take effect on the first day of a calendar quarter beginning on or after the date on which the federal banking agencies publish the final rules, with some exceptions. Specifically, the agencies may set a different effective date if (1) they have good cause (as explained in the final rule), (2) the Federal Reserve has issued the rule in connection with the implementation of monetary policy, or (3) a law requires that the rule take effect on another date. According to the act's legislative history, section 302's purpose is to have new rules take effect on only 4 days each year. By having only a few effective dates for new rules, insured depository institutions should be able to better inform themselves about the new rules and should have the time to put in place any needed training, software, and other operational modifications.

House Report 113–508 included a provision for GAO to report on federal banking agencies' compliance with section 302 of the Riegle Act.² This report (1) examines the extent to which the federal banking agencies' rulemakings complied with section 302 and (2) discusses policies and processes that the agencies use to comply with section 302.

¹Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, § 302(a), 108 Stat. 2160, 2214 (codified at 12 U.S.C. § 4802(a)).

²See House Report 113-508, Financial Services and General Government Appropriations Bill, 2015, accompanying the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130.

In summary, of the 248 final rules issued by the federal banking agencies between January 2009 and August 2015, we found 68 were subject to the Riegle Act, and all but one had effective or other dates that complied or were consistent with the act. For the one rule, the agency did not cite in the preamble published with the final rule the Riegle Act's good cause exemption to justify not setting the rule's effective date on the first day of a following quarter. In addition, we found that OCC and FDIC have rulemaking policies that discuss the Riegle Act, and the Federal Reserve's rulemaking process includes compliance with the act. Although the Riegle Act does not require agencies to have rulemaking policies, such policies can serve as internal controls to help agencies comply with applicable laws.

We identified final rules published by FDIC, the Federal Reserve, and OCC in the *Federal Register* between January 2009 and August 2015 and determined which of them included section 302 analysis. The federal banking agencies reviewed the accuracy and completeness of our rule lists and, in some cases, provided us with supplemental information and analyses. We also reviewed the agencies' analyses associated with the effective dates of the rules and determined how, if at all, the federal banking agencies met each of the requirements of section 302. We reviewed available FDIC, Federal Reserve, and OCC policies and procedures that the agencies had put in place to ensure that rulemakings comply with section 302 of the Riegle Act. We also reviewed GAO, inspector general, and other studies about section 302. We interviewed FDIC, Federal Reserve, and OCC officials about their controls and compliance with section 302. We also interviewed officials from two industry associations about their views on agency compliance with section 302 and benefits of section 302 to insured depository institutions.

We conducted this performance audit from June 2015 to January 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

GAO has been reviewing annually the analyses that federal banking and other financial regulators have conducted for their rulemakings under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).³ For these rulemakings, regulators may be required to conduct analyses under a number of laws, such as the

³Section 1573(a) of the Department of Defense and Full-Year Continuing Appropriations Act of 2011 amends the Dodd-Frank Wall Street Reform and Consumer Protection Act and includes a provision for GAO to conduct an annual study of financial services regulations, including the activities of the Bureau of Consumer Financial Protection. See Pub. L. No. 112-10, § 1573(a), 125 Stat. 38, 138-39 (2011) (codified at 12 U.S.C. § 5496b), and Pub. L. No. 111-203, 124 Stat. 1376 (2010). Specifically, we are directed to analyze and report on (1) the impact of regulations on the financial marketplace, including whether relevant federal agencies are applying sound cost-benefit analysis in promulgating rules; (2) efforts to avoid duplicative or conflicting rulemakings, information requests, and examinations; and (3) other related matters that we deem to be appropriate.

Paperwork Reduction Act of 1995 (PRA), Regulatory Flexibility Act (RFA), or the Riegle Act.⁴ As of January 2016, GAO has issued five reports under this mandate.⁵

In our December 2012 report, we generally found that regulators conducted the regulatory analyses required by various federal statutes, but we made several recommendations. For example, we recommended that the federal financial regulators take steps to better ensure that they more fully incorporate the specific practices in the Office of Management and Budget's (OMB) regulatory analysis guidance into their rulemaking policies and that they apply these practices more consistently.⁶ Consistent with our recommendations, FDIC and OCC, among others, incorporated the regulatory analysis guidance into their rulemaking policies. The Federal Reserve also follows the guidance in principle in its rulemaking process.

Agency Compliance with Riegle Act Section 302

Of the 248 final rules issued by the federal banking agencies between January 2009 and August 2015, 68 were subject to the Riegle Act, and all but one had effective or other dates that complied or were consistent with the act. Under the Riegle Act, rules applicable to insured depository institutions and that impose additional requirements on them must take effect on the first day of a calendar quarter beginning on or after the date on which the federal banking agencies publish the final rules, unless the rules satisfy one of the three exceptions (discussed above). As shown in table 1, 180 of the rules did not apply to insured depository institutions or did not impose additional reporting, disclosure, or other requirements on them. Of the remaining rules, 29 had effective dates that started on the first day following a calendar quarter as required by the act, and 34 did not because the agencies found good cause, as provided under the act, for an earlier effective date or the requirements of another law superseded the effective date under section 302. We found 4 rules with compliance dates (which dictate when regulated entities must comply with the rule's requirements) that were set for the first day of a following calendar quarter, consistent with the Riegle Act's purpose. In one rule, the agency did not cite the Riegle Act's good cause exemption in the final rule's preamble to justify not setting the rule's effective date on the first day of a following quarter.

⁴Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (codified as amended at 44 U.S.C. §§ 3501-3520), and Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified as amended at 5 U.S.C. §§ 601-612).

⁵GAO, *Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination*, GAO-12-151 (Washington, D.C.: Nov. 10, 2011); *Dodd-Frank Act: Agencies' Efforts to Analyze and Coordinate Their Rules*, GAO-13-101 (Washington, D.C.: Dec. 18, 2012); *Dodd-Frank Regulations: Agencies Conducted Regulatory Analyses and Coordinated but Could Benefit from Additional Guidance on Major Rules*, GAO-14-67 (Washington, D.C.: Dec. 11, 2013); *Dodd-Frank Regulations: Regulators' Analytical and Coordination Efforts*, GAO-15-81 (Washington, D.C.: Dec. 18, 2014); and *Dodd-Frank Regulations: Impacts on Community Banks, Credit Unions, and Systemically Important Institutions*, GAO-16-169 (Washington, D.C.: Dec. 30, 2015).

⁶See GAO-12-151.

Table 1: Riegle Act Section 302 as Applied to Federal Banking Agency Rules Issued between January 2009 and August 2015

Section 302 rule outcome	Number of rules
Rules are not applicable or do not impose additional requirements	180
Rules are not applicable to insured depository institutions	40
Rules do not impose additional reporting, disclosure, or other requirements on insured depository institutions	140
Section 302 is applicable	68
Rules set effective date on the first day of a following calendar quarter	29
Rules set effective date other than the first day of a following calendar quarter	34
Rules discuss good cause for setting effective date not on the first day of a following calendar quarter	17
Rules discuss another law as the reason for setting effective date not on the first day of a following calendar quarter	17
Rules set compliance date for first day of a following calendar quarter	4
Rules do not include all of the Riegle Act requirements	1
Total	248

Source: GAO analysis of Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Office of the Comptroller of the Currency final rules published in the *Federal Register*. | GAO-16-213R

FDIC staff told us that the effective dates of two of their rules were consistent with the Riegle Act’s goals in that they served to continue to provide a benefit to or ease the compliance burden on insured depository institutions.⁷ In addition, the rules’ compliance dates (which dictate when regulated entities must comply with the rule’s requirements) were set for the first day of a following calendar quarter, consistent with the Riegle Act’s purpose. Also, two Federal Reserve rules had compliance dates set for the first day of a following calendar quarter. By setting the compliance dates on the first day of a following calendar quarter, we view the rules as consistent with the Riegle Act’s purpose of having rules take effect on 1 of 4 days a year, so that insured depository institutions are able to better inform themselves about the new rules and have the time to put in place any needed training, software, and other operational modifications.

For one rule, the Federal Reserve did not cite the Riegle Act’s good cause exemption in the final rule’s preamble to justify not setting the rule’s effective date on the first day of a following quarter. In contrast, FDIC and OCC separately issued similar rules and cited the good cause exemption under the Riegle Act as the reason for not having their rules take effect on the first day of a following quarter.⁸ Federal Reserve officials did not disagree with our finding.

FDIC, Federal Reserve, and OCC staffs told us that they conduct analyses of rules for section 302 of the Riegle Act in conjunction with the regulatory analyses conducted for

⁷Specifically, FDIC staff said that the effective date for one rule was set on the date it was published to make immediately clear that an existing safe harbor continued and would not be called into question by any delay in the effective date. For the other rule, FDIC staff said that if the effective date had been set at the first day of a quarter following the rule’s published date, a number of insured depository institutions would not have been able to benefit from an extended filing deadline because the conclusion of the insured depository institutions’ fiscal year may have passed.

⁸See *Retail Foreign Exchange Transactions (Regulation NN)*, 78 Fed. Reg. 21019 (Apr. 9, 2013) (effective date May 13, 2013); *Retail Foreign Exchange Transactions*, 76 Fed. Reg. 40779 (July 12, 2011) (effective date July 15, 2011); and *Retail Foreign Exchange Transactions*, 76 Fed. Reg. 41375 (July 14, 2011) (effective date July 15, 2011).

the various laws that apply to the rulemaking. In other words, the agencies consider a rule's benefits and costs, in connection with setting the effective date and administrative compliance requirements, as part of their overall rulemaking process. For example, the agencies may conduct regulatory analysis pursuant to PRA, RFA, or the Unfunded Mandates Reform Act of 1995.⁹ Agency staffs also told us that they solicited public comments on their rules that typically covered benefits and costs and, in some cases, the effective date, as required by the Administrative Procedure Act (APA).¹⁰ In addition, staffs from these three agencies said that they generally document their analyses in the rules' preambles, when they use the good cause exemption, as required by section 302, or another exemption.

Agency Policies and Procedures on Section 302 of the Riegle Act

OCC and FDIC have rulemaking policies and procedures that discuss the Riegle Act, and the Federal Reserve's rulemaking process includes compliance with the act. OCC rulemaking policies discuss the APA's and Riegle Act's effective date requirements. Specifically, the delayed effective date prescribed by APA operates as a "floor." Thus, if the Riegle Act applies, the effective date will be 30 days, plus the number of days until the first day of the calendar quarter following publication. OCC policies state that a final rule may take effect sooner than prescribed by APA and the Riegle Act when there is a finding of "good cause." The APA and the Riegle Act require that the basis of the finding be published in the final rule's preamble. FDIC's rulemaking policies generally state that all rulemaking is to be carried out in accordance with APA and other applicable laws, and the policies provide a reference to the Riegle Act. Federal Reserve staff told us that their rulemaking process includes compliance with the Riegle Act, APA, and other applicable requirements. Although the Riegle Act does not require the agencies to have written policies for their compliance with the act, such policies can serve as internal controls to help agencies comply with applicable laws.¹¹

At the federal banking agencies, the legal departments and the team drafting each rule are responsible for ensuring that rulemakings comply with section 302 of the Riegle Act.

⁹PRA requires agencies to provide public notice, solicit comments, and request approval by OMB before imposing new information collection requirements. See 44 U.S.C. §§ 3506-3507. RFA requires agencies to examine the impact of their rules on small entities. See 5 U.S.C. § 603. The Unfunded Mandates Reform Act of 1995 requires agencies to analyze costs and benefits of federal mandates that may result in expenditures by state, local, and tribal governments and consider alternatives. Pub. L. No. 104-4, §§ 202, 205, 109 Stat. 48, 64-66 (codified at 2 U.S.C. §§ 1532, 1535). See GAO, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews*, GAO-09-205 (Washington, D.C.: Apr. 20, 2009).

¹⁰APA governs the process by which federal agencies propose and establish new regulations. See Pub. L. No. 89-554, § 553, 80 Stat. 378, 383 (1966) (codified at 5 U.S.C. § 553). APA generally requires agencies to provide public notice and seek comment prior to implementing new regulations. APA requires that final rules take effect no earlier than 30 days after the date of publication, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. See 5 U.S.C. § 553(d).

¹¹See, for example, GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

According to FDIC and OCC staffs, most rules issued by the agencies generally apply to insured depository institutions and are subject to section 302. In contrast, Federal Reserve staff told us that section 302 applied to a subset of their rules, because some of their rules applied only to bank holding companies or other noninsured depository institution entities. Staffs at the three agencies told us that they set the effective date of rules in accordance with section 302 and other laws, namely APA. They added that an attorney first determines whether section 302 applied to a rule. If it does, the effective date is set, as required, on the first day of any calendar quarter following the date on which the final rule was published, unless there is good cause for an earlier date or one of the other two exemptions discussed earlier applies.¹²

The agencies told us that they decide whether to use the good-cause exemption on a case-by-case basis after considering the facts and circumstances. FDIC staff said that they sometimes set an earlier effective date if complying with the section 302 date was impracticable, unnecessary, or contrary to the public interest, consistent with the definition of “good cause” under APA.¹³ Federal Reserve and OCC staffs told us that they generally set an earlier effective date than that mandated by section 302 if the benefits of doing so outweighed the costs.

Generally, the federal banking agencies and industry associations we interviewed told us that the Riegle Act continued to benefit insured depository institutions. OCC staff said that the law motivated agencies to remain thoughtful about ways to reduce or minimize any unnecessary burdens that a new rule might impose. FDIC staff said that the Riegle Act could benefit community banks that might need more time to make changes to their information technology systems to meet new rulemaking requirements. Officials from two banking associations that we interviewed said that their members supported the Riegle Act’s goal of giving banks more time to comply with new rules but maintained that the agencies should be doing more in-depth cost-benefit analysis for all rules under the various laws, including section 302 of the Riegle Act.

Agency Comments

We provided a draft of this report to FDIC, the Federal Reserve, and OCC for review and comment. FDIC, the Federal Reserve, and OCC provided technical comments that we have incorporated as appropriate.

We are sending copies of this report to appropriate congressional committees, FDIC, the Federal Reserve, and OCC. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

¹²For example, if a final rule is published on January 17, then the agency could set the effective date as April 1, July 1, October 1, and so forth.

¹³See 5 U.S.C. § 553(b)(B).

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or evansl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report include Richard Tsuhara (Assistant Director), Philip Curtin (Analyst-in-Charge), Bethany Benitez, and Emily Chalmers.

A handwritten signature in black ink that reads "Lawrence L. Evans, Jr." The signature is written in a cursive style with a large initial 'L' and a distinct 'E'.

Lawrence L. Evans, Jr.
Director, Financial Markets and Community Investment

Enclosure

List of Committees

The Honorable John Boozman

Chairman

The Honorable Christopher Coons

Ranking Member

Subcommittee on Financial Services and General Government

Committee on Appropriations

United States Senate

The Honorable Ander Crenshaw

Chairman

The Honorable José Serrano

Ranking Member

Subcommittee on Financial Services and General Government

Committee on Appropriations

House of Representatives

Enclosure I: Scope and Methodology

A report attached to the Consolidated and Further Continuing Appropriations Act, 2015¹⁴ included a provision for GAO to report on federal banking agencies' compliance with section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act).¹⁵ This report (1) examines the extent to which the federal banking agencies complied with section 302 in their rulemakings and (2) discusses policies and processes that the federal banking agencies use to comply with section 302.

To examine the extent to which the final rules that the agencies issued complied with section 302, we reviewed lists of final rules that the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Office of the Comptroller of the Currency (OCC) published in the *Federal Register* between January 2009 and August 2015. To identify the rules to be included on the lists, we conducted an advanced search on the *Federal Register* website (<https://www.federalregister.gov>). We first selected a published date range between January 1, 2009, and August 1, 2015, and then selected FDIC, the Federal Reserve, and OCC individually for each list. We selected only final rules. Among the three agencies, we found 248 rules that had been individually and jointly published between January 2009 and August 2015. The federal banking agencies reviewed the accuracy and completeness of our rule lists and, in some cases, provided us with supplemental information and analyses. The list of rules for each agency included a reference to each rule's effective date and the analysis associated with the selected effective date that was included in the preamble of each published rule. Each agency included explanatory language in the list, separate from the language in the preamble, to describe the rationale for the selected effective date.

We reviewed the agencies' analyses associated with the selected effective date and determined the extent to which the federal banking agencies complied with section 302. To review the rules, we first separated the rules by individual agency and by joint rules issued by two or more agencies working together.¹⁶ For each set of rules, we first determined whether the Riegle Act applied to the rulemaking. We looked at each rule to determine, first, whether the rulemaking applied to insured depository institutions, and second, whether the rule imposed additional reporting, disclosure, or other requirements. Next, we determined whether the effective date of the rulemaking was the first day of a following calendar quarter, consistent with the Riegle Act. If the rule's effective date was not set on the first day of a following calendar quarter, we determined

¹⁴See House Report 113-508, Financial Services and General Government Appropriations Bill, 2015, accompanying the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130.

¹⁵Pub. L. No. 103-325, § 302, 108 Stat. 2160, 2214 (codified at 12 U.S.C. § 4802).

¹⁶For example, FDIC, the Federal Reserve, and OCC published some rules jointly with the National Credit Union Administration, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Federal Trade Commission, among others. We considered these jointly published rules separately from rules published by the federal banking agencies alone.

whether the agency had cited one of the Riegle Act's exemptions (thereby justifying the decision to set a different effective date).¹⁷ We reviewed whether the agency explained its use of the good cause exemption for setting the rule's effective date earlier than the first day of a following calendar quarter. We also looked for other factors that might have been used in setting the effective date for a day other than the first day of a following calendar quarter. We interviewed FDIC, Federal Reserve, and OCC officials about their efforts to comply with section 302. We also interviewed industry association officials about implementation of section 302 and its continued relevance for insured depository institutions.

To examine the policies, procedures, and other controls that federal banking agencies have instituted to comply with section 302, we reviewed FDIC, Federal Reserve, and OCC rulemaking guidance on the controls that the agencies have put in place to comply with the Riegle Act. We interviewed FDIC, Federal Reserve, and OCC officials about the content of the rulemaking guidance and the procedures they follow to apply the Riegle Act. We also reviewed GAO, inspector general, and other studies about section 302.

We conducted this performance audit from June 2015 to January 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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¹⁷ Agencies may set a different effective date for a rule to which section 302 applies if: (1) the agency determines, for good cause published with the final rule, that the regulation should become effective earlier; (2) the rule is issued by the Federal Reserve in connection with the implementation of monetary policy; or (3) another law requires that the rule take effect on a different date. See 12 U.S.C. § 4802(b)(1).