



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

B-328787

February 7, 2017

The Honorable Michael Crapo  
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: Federal Reserve System: Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systematically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Board of Governors of the Federal Reserve System (Board) entitled "Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systematically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations" (RIN: 7100-AE37). We received the rule on January 24, 2017. It was published in the *Federal Register* as a final rule on January 24, 2017, with an effective date of March 27, 2017. 82 Fed. Reg. 8266.

The final rule requires a U.S. top-tier bank holding company identified under the Board's rules as a global systemically important bank holding company (covered BHC) to maintain outstanding a minimum amount of loss-absorbing instruments, including a minimum amount of unsecured long-term debt. In addition, the final rule prescribes certain additional buffers, the breach of which would result in limitations on the capital distributions and discretionary bonus payments of a covered BHC. The final rule applies similar requirements to the top-tier U.S. intermediate holding company of a global systemically important foreign banking organization with \$50 billion or more in U.S. non-branch assets (covered IHC). The final rule also imposes restrictions on other liabilities that a covered BHC or covered IHC may have outstanding in order to improve their resolvability and resiliency. These restrictions are referred to in the final rule as "clean holding company requirements."

Enclosed is our assessment of the Board's 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 Board 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

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Linda Robertson  
Assistant to the Board of Governors  
of the Federal Reserve System

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
FEDERAL RESERVE SYSTEM  
ENTITLED  
“TOTAL LOSS-ABSORBING CAPACITY, LONG-TERM DEBT,  
AND CLEAN HOLDING COMPANY REQUIREMENTS FOR  
SYSTEMATICALLY IMPORTANT U.S. BANK HOLDING COMPANIES  
AND INTERMEDIATE HOLDING COMPANIES OF SYSTEMICALLY  
IMPORTANT FOREIGN BANKING ORGANIZATIONS”  
(RIN: 7100-AE37)

(i) Cost-benefit analysis

The Federal Reserve System (Board) conducted an analysis of the potential costs and benefits of the external total loss-absorbing capacity (TLAC) and external long-term debt (LTD) requirements for the notice of proposed rulemaking (NPRM). To evaluate the costs attributable to the proposed requirements, this analysis estimated (a) the extent by which each covered bank holding company's (BHC) required capital and currently outstanding long-term debt fell short of the proposed requirements, (b) the increase in each U.S. global systemically important bank's (GSIB) ongoing cost of funding that would result from meeting the proposed requirements, (c) the expected increase in the interest rates that the U.S. GSIBs would charge to borrowers to make up for their higher funding costs, and (d) any decline in the gross domestic product (GDP) of the United States that would result from these increased lending rates.

The Board's analysis concluded that the estimated benefits would outweigh the estimated costs and that the proposed external TLAC and LTD requirements would yield a substantial net benefit for the U.S. economy. In evaluating the costs and benefits of the final rule, the Board states that it is important to consider the state of covered BHC's at the time of the NPRM. The Board states that while covered BHC's have closed some of the shortfall in their TLAC requirements since the time of the NPRM, this activity does not reduce the costs of complying with the requirements. In particular, information reviewed by the Board suggests that covered BHC's aggregate TLAC shortfall has fallen from roughly \$120 billion at the time of the proposal to roughly \$70 billion as of the third quarter of 2016. This reduction in shortfall, however, does not reduce the overall cost of the requirements but rather demonstrates that covered BHCs have already begun to bear the cost of the requirements of the final rule. The Board further states that, since the requirements of the final rule have been finalized largely as proposed, the overall estimated costs and benefits of the requirements as described in the final rule have not materially changed from the proposal. Several features of the final rule that differ from the NPRM have impacted overall costs and those were discussed in the final rule.

The Board states that to estimate the benefits of the final rule's requirements, the analysis built on the framework considered in a recent study titled “An assessment of the long-term economic impact of stronger capital and liquidity requirements” (LEI report). The LEI report estimated that, prior to the regulatory reforms undertaken since 2009, the probability of a financial crisis occurring in a given year was between 3.5 percent and 5.2 percent and the cumulative cost was between 20 percent and 100 percent of annual economic output. The Board states that even assuming that the lower ends of these ranges are accurate, these estimates reflect the well-understood fact that financial crises impose very substantial costs on the real economy. The

Board also states that the disorderly failures of major financial institutions play a major role in causing and deepening financial crises, as Congress recognized in enacting section 165 of the Dodd-Frank Act. Thus, the Board states that this final rule will materially reduce the risk that the failure of a covered BHC would pose to the financial stability of the United States by enhancing the prospects for the orderly resolution of such a firm. Moreover, by ensuring that the losses caused by the failure of such a firm are borne by private-sector investors and creditors (the holders of a covered BHC's eligible external TLAC), the final rule will materially reduce the probability that a covered BHC would fail in the first place by giving the firm's shareholders and creditors stronger incentives to discipline its excessive risk-taking. Both of these reductions will promote financial stability and materially reduce the probability that a financial crisis would occur in any given year. The final rule will, according to the Board, advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial potential losses associated with a higher probability of financial crises.

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

The Board states that it prepared and made available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking and solicited public comment on the rule on which it received no comments. The Board 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

As an independent regulatory agency, the Board is not subject to title II of the Act.

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

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

On November 30, 2015, the Board published a notice of proposed rulemaking in the *Federal Register*. 80 Fed. Reg. 74,926. The Board received approximately 50 comments on the proposed rule from banking organizations, trade associations, public interest advocacy groups, Members of Congress, and private individuals. Board staff also met with some commenters at their request to discuss their comments on the proposal and summaries of these meetings are on the Board's public Web site. The Board addressed comments on the proposed rule and the changes made in response in the final rule.

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

Certain provisions of the final rule contain collection of information requirements within the meaning of PRA. The OMB control number for this collection is 7100-0350. The final rule would revise the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100-0350). In addition, as permitted by PRA, the Board states that is extending for 3 years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100-0350). The Board received no comments on the PRA. The current estimated annual burden for the information collection is 118,546 hours. The proposed revision's estimated annual burden is 241 hours, resulting in a total estimated annual burden of 118,842 hours.

Statutory authorization for the rule

The final rule was promulgated under the authority of section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376. (2010); 12 U.S.C. § 5365.

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

As an independent regulatory agency, the Board is not subject to review requirements of the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Board is not subject to review requirements of the Order.