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January 3, 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; Federal Reserve System; Federal Deposit Insurance Corporation: Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures*

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); Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) entitled “Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures” (RINs: 1557-AE48, 7100-AF15, 3064-AE90). We received the rule on December 20, 2019. It was published in the *Federal Register* as a final rule on December 13, 2019. 84 Fed. Reg. 68019. The effective date of the rule is April 1, 2020.

The final rule revises the definition of “high volatility commercial real estate (HVCRE) exposure” in the regulations governing regulatory capital. This final rule conforms this definition to the statutory definition of “high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan,” in accordance with section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Pub. L. No. 115–174, 132 Stat. 1296 (2018). The final rule also clarifies the capital treatment for loans that finance the development of land under the revised HVCRE definition. According to the agencies, the new definition differs from the previous definition in two significant ways. First, the previous definition applied to loans that financed real estate acquisition development, or construction, whereas the new definition provides that it only applies to loans that “primarily” finance these activities and that are secured by land or improved real estate. Second, while both definitions exclude financing for projects where the borrower has contributed 15 percent equity, the previous definition limited the value of borrower contributed land that could be counted as an equity contribution. Previously, only the cash paid for the contributed land could be counted. In contrast, under the revised definition, according to the agencies, the full appraised value of a borrower’s contributed land will be counted.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

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
FEDERAL RESERVE SYSTEM,
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
“REGULATORY CAPITAL TREATMENT FOR
HIGH VOLATILITY COMMERCIAL REAL ESTATE (HVCRE) EXPOSURES”
(RINS: 1557-AE48, 7100-AF15, 3064-AE90)

(i) Cost-benefit analysis

The Department of the Treasury, Office of the Comptroller of the Currency (OCC); Federal Reserve System, Federal Deposit Insurance Corporation (collectively, the agencies) estimated banks would receive an increase in after tax revenues of \$489.1 million annually. The agencies state this is due to changes in the risk-weighted assets and allow banks to redistribute their assets to assets with higher risk weights as banks replace mature loans with new ones. The agencies state banks can undergo this redistribution without changing their baseline capital ratios.

The agencies further estimated banks would see an overall one-time compliance cost of \$5 million. According to the agencies, this compliance cost would arise from banks updating their policies and procedures and revaluating their high volatility commercial real estate exposure.

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

The agencies certify 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 stated the final rule will not result in expenditures by state, local, and tribal governments, or the private sector of \$100 million or more, 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 September 28, 2018, the agencies published a proposed rule in the *Federal Register*. 83 Fed. Reg. 48990. On July 23, 2019, the agencies proposed to clarify a portion of the proposal rule by publishing a land development proposal that would have added a new paragraph to the proposed definition of HVCRE exposure. 84 Fed. Reg. 35344. In response to the proposed rule, the agencies received 54 comments, and in response to the land

development proposal, the agencies received nine comments. The agencies responded to the comments in the final rule.

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

The agencies determined provisions of the final rule contain information collection requirements (ICRs) subject to the Act. The ICRs are associated with Office of Management and Budget (OMB) Control Numbers 1557–0318, 7100–0313, and 3064–0153. However, the agencies expect that these ICRs will not be affected by the final rule. The final rule also requires changes to the OMB Control Numbers 1557–0081, 1557–0239, 3064–0052, 3064–0159, 7100–0036, 7100–0128, and 7100–0319, which the agencies stated will be addressed in separate *Federal Register* notices.

Statutory authorization for the rule

The agencies promulgated the final rule pursuant to sections 93a, 161, 248(a), 321–338a, 481–486, 1462, 1462a, 1463, 1464, 1467a, 1815, 1818, 1819, 1828, 1828 note, 1831n, 1831o, 1831p–l, 1831w, 1831bb, 1831n note, 1835, 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5412 of title 12, United States Code. The agencies also promulgated the final rule pursuant to relevant sections of Pub. L. No. 102–233, 105 Stat. 1761; Pub. L. No. 102–242, 105 Stat. 2236; Pub. L. No. 111–203, 124 Stat. 1376; and Pub. L. No. 115–174, 132 Stat. 1296.

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

The agencies did not discuss the Order in the final rule.

Executive Order No. 13,132 (Federalism)

The agencies did not discuss the Order in the final rule.