



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

B-331977

March 18, 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: *Federal Deposit Insurance Corporation: Securitization Safe Harbor Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Deposit Insurance Corporation (FDIC) entitled “Securitization Safe Harbor Rule” (RIN: 3064-AF09). We received the rule on March 12, 2020. It was published in the *Federal Register* as a final rule on March 4, 2020. 85 Fed. Reg. 12724. The effective date of the rule is May 4, 2020.

The final rule revises FDIC’s rule entitled “Treatment of financial assets transferred in connection with a securitization or participation” (the Securitization Safe Harbor Rule). According to FDIC, the Securitization Safe Harbor Rule addresses circumstances that may arise if FDIC is appointed receiver or conservator for an insured depository institution (IDI) that has sponsored one or more securitization transactions. FDIC stated that this final rule removes the requirement of the Securitization Safe Harbor Rule that the documents governing a securitization transaction require compliance with Regulation AB of the Securities and Exchange Commission in circumstances where, under the terms of the Regulation AB itself, Regulation AB is not applicable to the transaction.

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). It was published in the *Federal Register* as a final rule on March 4, 2020. 85 Fed. Reg. 12724. The Senate received the rule on March 16, 2020, and the *Congressional Record* does not indicate when the House of Representatives received it. 166 Cong. Rec. S1777 (daily ed. March 17, 2020). The rule has a stated effective date of May 4, 2020. Therefore the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of FDIC'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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: M. Andy Jiminez
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
“SECURITIZATION SAFE HARBOR RULE”
(RIN: 3064-AF09)

(i) Cost-benefit analysis

In its submission to us, the Federal Deposit Insurance Corporation (FDIC) indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

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

FDIC certified that this final rule will not have a substantial economic effect 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, FDIC is not subject to the Act.

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

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

On August 22, 2019, FDIC published a proposed rule. 84 Fed. Reg. 43732. FDIC received 10 comment letters from five trade organizations, a financial reform advocacy group, and a financial market public interest group. FDIC responded to comments in this final rule.

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

FDIC determined that the final rule revises an existing information collection requirement (ICR). FDIC stated that the ICR entitled “Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation After September 30, 2010” will be submitted to the Office of Management and Budget (OMB) for review (OMB Control Number 3064-0177). FDIC stated the ICR has a total estimated annual burden of 348 hours.

Statutory authorization for the rule

FDIC promulgated this final rule pursuant to sections 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), and 1823(e)(2) of title 12, United States Code; in addition to section 401(h) of Public Law 101-73.

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

As an independent regulatory agency, FDIC is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, FDIC is not subject to the Order.