



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

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May 4, 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 Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans*

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; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (collectively, the agencies) entitled “Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans” (RINs: 1557–AE90, 7100–AF86, 3064–AF49). We received the rule on April 20, 2020. It was published in the *Federal Register* as an interim final rule, request for comment on April 13, 2020. 85 Fed. Reg. 20387. The effective date of the rule is April 13, 2020. The rule also applies to certain loans originated beginning on April 3, 2020, and pledged to Federal Reserve Banks (Banks) in connection with the Paycheck Protection Program Lending Facility (PPPL Facility).

According to the agencies, the interim final rule amends the agencies’ capital rules for banking organizations. According to the agencies, the amendment facilitates use of the PPPL Facility authorized by the Board. The agencies stated that, under the PPPL Facility, each of the Banks will extend non-recourse loans to institutions to fund Small Business Administration guaranteed loans covered under the Paycheck Protection Program (PPP). The agencies asserted that Congress created PPP as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), in recognition of the exigent circumstances faced by small businesses. Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). According to the agencies, as a function of participating in the PPPL Facility, a banking organization must originate and hold PPP covered loans on its balance sheet. The agencies observed that, as a result, participating banking organizations could potentially be subject to increased regulatory capital requirements. The agencies asserted that these requirements do not reflect the substantial protections from credit

and market risk provided by the PPPL Facility. The agencies concluded that it is appropriate to exclude the effects of the PPP covered loans from banking organizations' regulatory capital. The agencies stated that the rule clarifies that these loans receive a zero percent risk weight for purposes of the banking organizations' risk-based capital requirements. The agencies stated that this clarification is consistent with section 1102 of the CARES Act, which, according to the agencies, requires banking organizations to apply a zero percent risk weight to PPP covered loans. Pub. L. No. 116-136, div. A, § 1102, 134 Stat. at 286.

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). The 60-day delay in the effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(B), (d), 808(2). The agencies stated that the spread of the coronavirus disease 2019 (COVID-19) has slowed economic activity, which has resulted in severe liquidity constraints at small businesses and has forced many small businesses to close temporarily or furlough employees. The agencies concluded that continued access to financing will be crucial for small businesses to weather economic disruptions caused by COVID-19 and to help restore economic activity. The agencies asserted that the rule facilitates use of the PPPL Facility authorized by the Board to provide liquidity to small business lenders and the broader credit markets and to stabilize the financial system. For these reasons the agencies found good cause to waive the delayed effective date based on its finding that delay would be contrary to the public interest in light of current market uncertainty.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.



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  
DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMPTROLLER OF THE CURRENCY;  
FEDERAL RESERVE SYSTEM;  
FEDERAL DEPOSIT INSURANCE CORPORATION  
ENTITLED  
“REGULATORY CAPITAL RULE: PAYCHECK PROTECTION  
PROGRAM LENDING FACILITY AND  
PAYCHECK PROTECTION PROGRAM LOANS”  
(RINs: 1557–AE90, 7100–AF86, 3064–AF49)

(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 interim 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

According to the Department of the Treasury, Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); and FDIC (collectively, the agencies), the Act’s requirements relating to initial and final regulatory flexibility analysis do not apply because the agencies did not issue a notice of proposed rulemaking. The agencies asserted that the Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The agencies stated that, nevertheless, comment is sought on whether, and the extent to which, the rule would affect a significant 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

According to the agencies, the Act does not apply to rules where a general notice of proposed rulemaking was not published. The agencies determined that the Act’s requirements were not applicable to this interim final rule because they found good cause to waive notice-and-comment rulemaking. The agencies stated they did not prepare an economic analysis of the rule under the Act.

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

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

On April 13, 2020, the agencies published this interim final rule. 85 Fed. Reg. 20387. The agencies issued the rule without prior notice and opportunity for public comment and the delayed effective date ordinarily prescribed by the Act. The agencies stated that the spread of the coronavirus disease 2019 (COVID–19) has slowed economic activity in the United States. According to the agencies, small businesses are acutely impacted by COVID-19 as stay at home orders have collapsed revenue streams for many small businesses. The agencies

asserted that this has resulted in severe liquidity constraints at small businesses and has forced many small businesses to close temporarily or furlough employees. The agencies concluded that continued access to financing will be crucial for small businesses to weather economic disruptions caused by COVID-19 and to help restore economic activity. The agencies asserted that the rule facilitates use of the Paycheck Protection Program Lending Facility (PPPL Facility) authorized by the Board to provide liquidity to small business lenders and the broader credit markets and to stabilize the financial system. For these reasons the agencies found good cause consistent with the public interest to issue the rule without notice and comment. The agencies also concluded that, because the rule relieves a restriction, the rule is exempt from the Act's delayed effective date requirement.

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

The agencies determined that this interim final rule affects information collection requirements (ICRs) under the Act. The agencies stated that it will submit to the Office of Management and Budget (OMB) the ICRs for the Consolidated Reports of Condition and Income (Call Reports) (OCC OMB No. 1557-0081; Board OMB No. 7100-0036; FDIC OMB No. 3064-0052) and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (OCC OMB No. 1557-0239; Board OMB No. 7100-0319; FDIC OMB No. 3064-0159). The Board also stated that it reviewed the rule pursuant to authority delegated by OMB. The agencies stated that, although there is a substantive change to the ICRs, the change should be minimal and result in zero net change in hourly burden under the ICRs.

The Board also determined that the rule affects the ICR for the Financial Statements for Holding Companies (FR Y-9 reports) (OMB No. 7100-0128). The Board described an OMB delegation of authority under the Act for the Board to approve an ICR revision without opportunity for public comment under certain circumstances. The Board stated that it determined, pursuant to this OMB delegation, that the revisions to the FR Y-9 reports must be instituted quickly and that public participation in the approval process would defeat the purpose of the information collection, as delaying the revisions would result in collection of inaccurate information and would interfere with the Board's ability to perform its statutory duties. The Board estimated the burden hours for the FR Y-9 reports. The Board stated that it invited, pursuant to the OMB delegation, public comment on the FR Y-9 reports.

#### Statutory authorization for the rule

The agencies promulgated this interim final rule pursuant to various sections of titles 12 and 15, United States Code, as well as Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020) and Public Law 115-174, 132 Stat. 1296 (May 24, 2018).

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

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

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

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