



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

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June 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: Federal Reserve System: Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations: Eligible Retained Income

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 Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations: Eligible Retained Income" (RIN: 7100-AF80). We received the rule on May 20, 2020. It was published in the *Federal Register* as an interim final rule with request for comments on March 26, 2020. 85 Fed. Reg. 17003. The effective date of the rule is March 26, 2020.

The Board stated the interim final rule revises the definition of eligible retained income to make any automatic limitations on capital distributions that could apply under the Board's total loss-absorbing capacity (TLAC) rule more gradual and aligns to recent action taken by the Board and other federal banking agencies in the capital rule. According to the Board, TLAC buffer requirements were established to encourage better capital conservation by covered companies and to enhance the resilience of the banking system during stress periods. The Board stated that, in particular, the TLAC buffer requirements were intended to limit the ability of covered companies to distribute capital in the form of dividends and discretionary bonus payments, and therefore strengthen the ability of covered companies to continue lending and conducting other financial intermediation activities during stress periods. According to the Board, the revised definition was necessary in order for covered companies to avoid facing abrupt limitations on capital distributions, which might create a strong incentive to limit their lending and other financial intermediation activities.

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 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)(3)(B), 808(2). Specifically, the Board stated covered companies would have a strong incentive to limit their lending activity in order to avoid facing abrupt restrictions on capital distributions, due to the economic uncertainty caused by the coronavirus disease 2019. According to the Board, the interim final rule would allow covered companies to focus on continuing to lend to creditworthy households and businesses.

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. 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.

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: 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
BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM
ENTITLED
“TOTAL LOSS-ABSORBING CAPACITY, LONG-TERM DEBT, AND CLEAN HOLDING
COMPANY REQUIREMENTS FOR SYSTEMICALLY IMPORTANT U.S. BANK HOLDING
COMPANIES AND INTERMEDIATE HOLDING COMPANIES OF SYSTEMICALLY
IMPORTANT FOREIGN BANKING ORGANIZATIONS: ELIGIBLE RETAINED INCOME”
(RIN: 7100-AF80)

(i) Cost-benefit analysis

In its submission to us, the Board of Governors of the Federal Reserve System (Board) indicated that it did not prepare an analysis of the costs and benefits of this final rule.

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

According to the Board, it concluded that the RFA’s requirements relating to initial and final regulatory flexibility analysis do not apply because, in accordance with section 553(b)(B) of the Administrative Procedures Act, the Board determined for good cause that general notice and opportunity for public comment is unnecessary. Therefore, the Board did not issue a notice of proposed rulemaking.

(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 the Act.

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

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

On March 26, 2020, the Board published an interim final rule. 85 Fed. Reg. 17003. According to the Board, the interim final rule is exempt from the notice and comment procedures and delayed effective date requirement of the Administrative Procedure Act. The Board stated that pursuant to 553(b)(B) of the Administrative Procedure Act, general notice and opportunity for public comment are not required for good cause, because covered companies would have a strong incentive to limit their lending activity in order to avoid facing abrupt restrictions on capital distributions, due to the economic uncertainty caused by coronavirus disease 2019. The Board stated the interim final rule would allow covered companies to focus on continuing to lend to creditworthy households and businesses. Because the rule relieves a restriction, the Board also determined it was exempt from the delayed effective date requirement.

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

The Board stated that it reviewed the interim final rule pursuant to the authority delegated to it by the Office of Management and Budget, and determined that the interim final rule does not contain any collections of information pursuant to the PRA.

Statutory authorization for the rule

The Board promulgated this final rule under the authority of 321-338a, 481-486, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.*, 3101 note, 3904, 3906-3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, and 5371 of title 12, United States Code.

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

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

Executive Order No. 13,132 (Federalism)

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