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June 26, 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: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio for Depository Institutions*

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), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) entitled “Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio for Depository Institutions” (RINs: 1557-AE85; 7100-AF91; 3064-AF44). We received the rule on June 12, 2020. It was published in the *Federal Register* as an interim final rule on June 1, 2020. 85 Fed. Reg. 32980. The effective date of the rule is June 1, 2020 through March 31, 2021. The agencies are holding a comment period through July 31, 2020.

According to the agencies, this interim final rule will provide depository institutions that are subject to the supplementary leverage ratio (SLR) with the ability to temporarily exclude Treasuries and deposits at Federal Reserve Banks from their total leverage exposure through March 31, 2021. The agencies state that the rule is necessary to facilitate depository institutions’ significant increase in reserve balances resulting from the Federal Reserve’s asset purchases and the establishment of various programs to support the flow of credit to the economy, and to allow these institutions to continue to accept exceptionally high levels of customer deposits. The agencies also state that the rule clarifies that the SLR provisions in their respective Prompt Corrective Action regulations apply to all banking organizations subject to Category III standards, in addition to banking organizations subject to Category I and II standards.

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. § 808(2). According to the agencies, delaying the effective date of the rule would be contrary to the public interest in light of current uncertainty in the financial markets.

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.

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: 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
“TEMPORARY EXCLUSION OF U.S. TREASURY SECURITIES
AND DEPOSITS AT FEDERAL RESERVE BANKS FROM THE SUPPLEMENTARY
LEVERAGE RATIO FOR DEPOSITORY INSTITUTIONS”
(RIN: 1557-AE83; 7100-AF91; 3064-AF44)

(i) Cost-benefit analysis

The Department of the Treasury, Office of the Comptroller of the Currency (OCC) conducted an economic analysis of this interim final rule. This analysis evaluated the impact on the minimum required capital associated with temporarily revising the supplementary leverage ratio (SLR) calculation for participating banks, banks' potential responses to the estimated decrease in required regulatory capital, and the benefits to depository institutions to holding certain assets.

To estimate the impact on the minimum required capital, OCC first reviewed the current minimum required capital using data from the fourth quarter of 2019 under the total risk-based capital (RBC) standardized approach, the total RBC advanced approach, the tier I leverage requirement, and the SLR or enhanced supplementary leverage ratio (eSLR), depending on if the bank was a U.S. global systemically important bank holding company. Then, OCC estimated the amount of required total capital under the new constraint for each bank. Finally, OCC estimated the potential reduction in required capital by taking the lesser of: the difference between the current SLR/eSLR requirement and temporary SLR/eSLR requirement in the rule; and the difference between the current SLR/eSLR requirement and the next most binding capital constraint using current capital requirements of total RBC under the standardized and advanced approaches and tier I leverage requirement. Using this calculation, OCC estimated that there would be as much as a \$55.6 billion reduction in minimum required capital for OCC-supervised banks under the rule.

Using this estimate of the reduction in minimum required capital for OCC-supervised banks, OCC then estimated the costs of the additional capital made available by the rule. OCC concluded that a decrease in required equity capital would decrease the cost of capital for banks by increasing tax deductions, and calculated that, under the rule, banks could increase their leverage and thereby increase tax deductions by between \$0 and \$55.6 billion. To estimate the upper bound of the annual tax benefit of a reduction in capital for the participating banks whose binding capital constraint is the SLR or eSLR, OCC multiplied the maximum increased tax deductions (\$55.6 billion) by the interest rate (6 percent) and the corporate tax rate (26 percent). Using this calculation, OCC estimated that the upper bound of the annual tax benefit of a reduction in capital for these banks would be approximately \$867.8 million per year.

Overall, OCC estimated that the rule will result in an aggregate net savings to electing banks that ranges from \$0 to \$867.8 million per year.

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

OCC, the Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) stated that the requirements of the Act do not apply if a rule is exempt from notice and comment procedures. Because the agencies determined that this interim final rule is exempt from notice and comment procedures, the agencies concluded that they are not required to perform a regulatory flexibility analysis.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The agencies stated that the requirements of the Act do not apply to final rules for which a general notice of proposed rulemaking was not published. The agencies stated because OCC determined that this interim final rule is exempt from notice and comment procedures, OCC 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 June 1, 2020, the agencies published an interim final rule. 85 Fed. Reg. 32980. The agencies waived notice and comment procedures because, according to the agencies, the rule will mitigate the potential negative effects that would arise if depository institutions cannot sustain the rapid increase in deposits at Federal Reserve Banks and holdings of Treasuries. The agencies also determined that they had good cause to waive the delay in effective date because, according to the agencies, the rule will provide temporary capital relief. In addition, the agencies also determined that there was good cause to waive notice and comment procedures and the delay in effective date for the portion of the rule that makes additional technical edits and corrections to the SLR requirements because, according to the agencies, these edits and corrections are non-substantive.

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

The agencies determined that this interim final rule contains information collection requirements (ICRs) under the Act. OCC and FDIC created new information collection requests associated with a new notice opt-in requirement and a requirement for prior approval for distributions. OCC's ICR is entitled "Risk-Based Capital Standards: Advanced Capital Adequacy Framework" (OMB control number 1557-0318). For this request, OCC estimated 66,333 total burden hours. FDIC's ICR is entitled "Regulatory Capital Rules" (OMB control number 3064-0153). For this request, FDIC estimated 128,140 total burden hours. In addition, the Board temporarily revised existing information collection requests to accurately reflect certain aspects of the rule and other interim final rules. According to the Board, OMB delegated to the Board the authority under the Act to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation. The first temporarily revised ICR is entitled "Financial Statements for Holding Companies" (OMB control number 7100-0128). For this request, the Board estimated the annual burden hours. The second temporarily revised ICR is entitled "Recordkeeping and Disclosure Requirements Associated with Regulation Q" (OMB control number 7100-0313). For

this request, the Board estimated a total annual burden of 1,136 hours for initial setup, and 80,245 hours for ongoing.

Statutory authorization for the rule

The agencies promulgated this interim final rule pursuant to various sections of title 12, United States Code; section 5318 of title 31, United States Code; sections 4012a, 4104a, 4104b, 4106, and 4128 of title 42, United States Code; the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136; the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law 102-233, as amended; the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, as amended; and the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115-174.

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.