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B-332458

September 1, 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: Collective Investment Funds: Prior Notice Period for Withdrawals*

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) entitled "Collective Investment Funds: Prior Notice Period for Withdrawals" (RIN: 1557-AE99). We received the rule on August 18, 2020. It was published in the *Federal Register* as an interim final rule, request for comment on August 13, 2020. 85 Fed. Reg. 49229. The interim final rule has an effective date of August 13, 2020. OCC is holding a comment period through September 14, 2020.

OCC states its regulations permit a bank administering a collective investment fund (CIF) that is invested in certain assets to require a prior notice period for withdrawals from the fund, which OCC interprets as requiring the bank to withdraw an account within the prior notice period or within 1 year after prior notice was required (standard withdrawal period). According to OCC, the interim final rule codifies the standard withdrawal period of 1 year, as interpreted by OCC, and creates a limited exception that allows a bank, with OCC approval, to withdraw an account from a CIF up to 1 year beyond the standard withdrawal period, with opportunities for further extensions, provided that certain conditions are satisfied. OCC stated the exception is intended to enable a bank to preserve the value of the CIF's assets for the benefit of fund participants during unanticipated and severe market conditions, such as those resulting from the current national health emergency concerning the coronavirus disease (COVID-19) outbreak.

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). OCC determined it had good cause to waive the delayed effective date because OCC is concerned that the disruption and stress in the real estate markets and other markets for not readily marketable assets resulting from the outbreak of the COVID-19 emergency, coupled with requiring a bank to withdraw an account within the standard withdrawal period, may undermine the ability of a bank to realize an appropriate value for CIF assets and be harmful in preserving the value of the CIF's assets for the benefit of fund participants.

Enclosed is our assessment of OCC'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: 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
ENTITLED
“COLLECTIVE INVESTMENT FUNDS:
PRIOR NOTICE PERIOD FOR WITHDRAWALS”
(RIN: 1557-AE99)

(i) Cost-benefit analysis

The Department of the Treasury, Office of the Comptroller of the Currency (OCC) stated during normal economic conditions, a bank can typically satisfy withdrawal requests within the standard withdrawal period. However, according to OCC, where unanticipated and severe economic disruptions result in a stressed market, a bank may be faced with an increased number of withdrawal requests and reduced market liquidity. OCC estimated if the bank is required to sell assets held by a collective investment fund (CIF) to satisfy withdrawals within the standard withdrawal period, it may have difficulty realizing a fair value for those assets. OCC further stated this could compel fire sales of CIF assets and lead to economic harm for CIF participants, which would be contrary to general fiduciary principles that require a CIF trustee to act in the interests of CIF participants. Similarly, according to OCC, an in-kind distribution of CIF assets to CIF participants would be generally impractical and involve considerable difficulties and transaction costs for the participants, who may be ill-equipped to receive, manage, and liquidate such assets.

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

OCC determined RFA's requirements do not apply to the interim final rule.

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

OCC determined the interim final rule is not subject to the Act's requirements.

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

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

OCC waived notice and comment procedures for the final rule for good cause. OCC determined it had good cause because it is concerned that the disruption and stress in the real estate markets and other markets for not readily marketable assets resulting from the outbreak of the coronavirus disease 2019 emergency, coupled with requiring a bank to withdraw an account within the standard withdrawal period, may undermine the ability of a bank to realize an appropriate value for CIF assets and be harmful in preserving the value of the CIF's assets for the benefit of fund participants.

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

OCC stated the interim final rule contains information collection requirements (ICRs) subject to the Act. The ICR is entitled Fiduciary Activities and is associated with Office of Management and Budget Control Number 1557-0140. OCC estimated the annual burden for the ICR to be 220 hours.

Statutory authorization for the rule

OCC promulgated the final rule pursuant to sections 24, 92a, and 93a of title 12, and sections 78q, 78q-1, and 78w of title 15, United States Code.

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

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

Executive Order No. 13,132 (Federalism)

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