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United States Government Accountability Office
Washington, DC 20548

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November 7, 2008

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Federal Reserve System: Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008*

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 Reserve System (Federal Reserve), entitled “Capital Adequacy Guidelines: Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008” (Regulation Y; Docket No. R-1336). We received the rule on October 27, 2008. It was published in the *Federal Register* as an “interim final rule with request for public comment” on October 22, 2008. 73 Fed. Reg. 62,851.

The interim final rule permits bank holding companies that issue new senior perpetual preferred stock to the Treasury under the capital purchase program announced by the Secretary of the Treasury on October 14, 2008, to include such capital instruments in Tier 1 capital for purposes of the Federal Reserve’s risk-based and leverage capital rules and guidelines for bank holding companies. The interim final rule became effective on October 17, 2008. Federal Reserve found good cause for the rule to become effective retroactively, notwithstanding the requirement of the Congressional Review Act that major rules not become effective until 60 days after publication or receipt by Congress. 5 U.S.C. § 808(2).

Enclosed is our assessment of the Federal Reserve's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Federal Reserve complied with the applicable requirements.

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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Laricke D. Blanchard
Assistant to the Board
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
FEDERAL RESERVE SYSTEM
ENTITLED
"CAPITAL ADEQUACY GUIDELINES: TREATMENT OF
PERPETUAL PREFERRED STOCK ISSUED TO THE
UNITED STATES TREASURY UNDER THE
EMERGENCY ECONOMIC STABILIZATION ACT OF 2008"
(REGULATION Y; DOCKET NO. R-1336)

(i) Cost-benefit analysis

The Federal Reserve did not prepare a cost-benefit analysis. However, the interim final rule does explain that the Federal Reserve finds strong public policy considerations to allow Senior Perpetual Preferred Stock issued to Treasury under the Troubled Asset Relief Program (TARP) to be included as Tier 1 capital for the purposes of the Federal Reserve's risk-based and leverage capital rules and guidelines, as an exception to its longstanding stance regarding the unacceptability of a rate step-up in other regulatory capital instruments.

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

The Federal Reserve certifies that this interim final rule will not affect a significant impact on a substantial number of small bank holding companies.

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

The Unfunded Mandate Reform Act does not apply to independent regulatory agencies, such as the Federal Reserve.

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

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

The Federal Reserve found that there is good cause for issuing the interim final rule and making the rule effective retroactively to October 17, 2008, and that it would be impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The Federal Reserve solicits comments on all aspects of the rule and will make changes it considers appropriate or necessary after review of any comments received.

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

The interim final rule contains no collection of information requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

This final rule is issued under the authority of the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. 110-342, 122 Stat. 3765 (2008).

Executive Order No. 12,866

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve.