



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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December 6, 2017

The Honorable Michael Crapo  
Chairman  
The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
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 Rules: Retention of Certain Existing Transition Provisions for Banking Organizations That Are Not Subject to the Advanced Approaches Capital Rules*

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); the Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) entitled “Regulatory Capital Rules: Retention of Certain Existing Transition Provisions for Banking Organizations That Are Not Subject to the Advanced Approaches Capital Rules” (RINs: 1557-AE 23; 7100-AE 83; 3064-AE 63). We received the rule on November 22, 2017. It was published in the *Federal Register* as a final rule on November 21, 2017. 82 Fed. Reg. 55,309.

The final rule extends the regulatory capital treatment applicable during 2017 under the regulatory capital rules (capital rules) for certain items. These items include regulatory capital deductions, risk weights, and certain minority interest limitations. The relief provided under the final rule applies to banking organizations that are not subject to the capital rules' advanced approaches (non-advanced approaches banking organizations). Specifically, for these banking organizations, the final rule extends the current regulatory capital treatment of mortgage servicing assets, deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks, significant investments in the capital of unconsolidated financial institutions in the form of common stock, non-significant investments in the capital of unconsolidated financial institutions, significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock, and common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest exceeding the capital rules' minority interest limitations. Under the final rule, advanced approaches banking organizations continue to be subject to the transition provisions established by the

capital rules for the above capital items. Therefore, for advanced approaches banking organizations, their transition schedule is unchanged, and advanced approaches banking organizations are required to apply the capital rules' fully phased-in treatment for these capital items beginning January 1, 2018.

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). This final rule was published in the *Federal Register* on November 21, 2017. 82 Fed. Reg. 55,309. We received it on November 22, 2017. It has a stated effective date of January 1, 2018. Therefore, the final rule does not have the required 60-day delay in its effective date. However, we note that the agencies state that banking organizations subject to the final rule will be permitted to elect to comply with it as of January 1, 2018.

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. With the exception of the 60-day delay in effective date requirement, our review of the procedural steps taken indicates that the agencies 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: M. Andy Jiminez  
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Federal Deposit Insurance Corporation

Shaquita Merritt  
Program Specialist (Paperwork Reduction Act)  
Office of the Comptroller of the Currency  
Department of the Treasury

ENCLOSURE

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 RULES: RETENTION OF CERTAIN  
EXISTING TRANSITION PROVISIONS FOR BANKING ORGANIZATIONS  
THAT ARE NOT SUBJECT TO THE ADVANCED  
APPROACHES CAPITAL RULES”  
(RINs: 1557-AE 23; 7100-AE 83; 3064-AE 63)

(i) Cost-benefit analysis

The Department of the Treasury, Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) discussed some costs and benefits in the final rule. The final rule applies to all OCC-supervised entities that are not subject to the advanced approaches risk-based capital rules, and thus potentially affects a substantial number of small entities. The OCC states that it has determined that 139 OCC-supervised small entities will be directly impacted by the final rule provisions pertaining to the transitions for the threshold deduction items, two OCC-supervised small entities will be directly impacted by the final rule provisions pertaining to the transitions for the surplus minority interest, and 596 OCC-supervised small entities will be directly impacted by the final rule provisions that retain the 100 percent risk weight (instead of a 250 percent risk weight) for non-deducted mortgage servicing assets (MSAs), deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks (temporary difference DTAs), and significant investments in the capital of unconsolidated financial institutions.

However, the final rule would provide a small economic benefit to those entities and value of the change in capital levels will be significant only for three such entities. The Board states that the final rule could have a temporary positive impact in small banking organizations that have significant amounts of MSAs or temporary difference DTAs, capital ratios during 2018 and thereafter. FDIC states that retaining the transition provisions for the regulatory capital treatment of MSAs, temporary difference DTAs, investments in the capital of unconsolidated financial institutions, and minority interest will have a marginally positive impact on the regulatory capital ratios of nearly all small FDIC-supervised banking institutions. FDIC further states that its analysis has identified that absent the final rule, 31 small FDIC-supervised banking institutions would have a decrease of 1 percent or more in common equity tier 1 capital, tier 1 capital, and or total capital. Furthermore, 31 small FDIC-supervised banking institutions would have an increase in risk-weighted assets greater than 3 percent absent the final rule. FDIC states that the final rule will enable FDIC-supervised institutions to avoid a potential future increase in capital of \$101.3 million and associated costs for that capital of \$2.8 million.

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

OCC and FDIC certified that the final rule will not have a significant economic impact on a substantial number of OCC- or FDIC-supervised small entities. According to the Board, under regulations issued by the Small Business Administration (SBA), a small entity includes a bank, bank holding company, or savings and loan holding company with assets of \$550 million or less (small banking organization). As of June 30, 2017, there were approximately 3,451 small bank holding companies, 224 small savings and loan holding companies, and 566 small state member banks. The final rule applies to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's regulatory capital rules, but excluding state member banks, bank holding companies, and savings and loan holding companies that are subject to the advanced approaches in the capital rules. In general, the Board states that its capital rules only apply to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than \$1 billion in total assets that also meet certain additional criteria. Thus, according to the rule, most bank holding companies and savings and loan holding companies affected by the final rule exceed the \$550 million asset threshold at which a banking organization would qualify as a small banking organization. The Board further states that the final rule does not impact the recordkeeping and reporting requirements for affected small banking organizations, and that the final rule is expected to provide a reduction in capital requirements for small bank holding companies, savings and loan holding companies, and state member banks. The Board concluded that the economic impact of the final rule on small banking organizations is expected to be marginally positive. As a result, the Board states that it did not adopt any alternative to the proposal in the 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 analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, OCC states that it considered whether the final rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). OCC has determined that this final rule would not result in expenditures by state, local, and tribal governments, or the private sector, of \$100 million or more in any one year. As independent regulatory agencies, the Board and FDIC are not subject to the Act.

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

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

In 2013, the agencies adopted rules that strengthened the capital requirements applicable to banking organizations supervised by the agencies in order to address weaknesses that became apparent during the financial crisis of 2007-08. The capital rules contained transition provisions that phase in certain requirements over several years in order to give banking organizations sufficient time to adjust and adapt to such requirements. On August 25, 2017, the agencies issued a notice of proposed rulemaking (transitions NPR) for banking organizations that are not advanced approaches banking organizations (non-advanced approaches banking organizations) to extend certain transition provisions in the capital rules. The agencies state that the transitions NPR would provide that the transition provisions for certain items would not

be fully phased in for non-advanced approaches banking organizations. The agencies received 36 unique comment letters from banking organizations, trade associations, public interest groups, and private individuals, and nearly 200 uniform letters signed by different banking organizations and bank employees. The agencies discussed the comments in the final rule. According to the agencies, APA requires that a final rule be published in the *Federal Register* no less than 30 days before its effective date unless, among other exceptions, the final rule relieves a restriction. The final rule extends certain transition provisions that were set to expire on December 31, 2017, and thus relieves non-advanced approaches banking organizations from compliance with certain stricter capital requirements that would otherwise have taken effect on January 1, 2018.

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

The agencies state the final rule does not create any new or revise any existing collections of information under the PRA. Accordingly, no information collection request has been submitted to the Office of Management and Budget (OMB) for review. The agencies state that they did not receive any comments on the PRA. However, the agencies also state that they will clarify the reporting instructions for the Call Report. The agencies will clarify the reporting instructions for the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Control Nos. 1557-0081, 7100-0036, 3604-0052), OCC will clarify the instructions for OCC DFAST 14A (OMB Control No. 1557-0319), FDIC will clarify the instructions for FDIC DFAST 14A (OMB Control No. 3064-0189), and the Board will clarify the instructions for the FR Y-9C (OMB Control No. 7100-0128) and the FR Y-14A and FR Y-14Q (OMB Control No. 7100-0341) to reflect the changes to the capital rules resulting from this final rule.

#### Statutory authorization for the rule

The final rule is authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010), and specifically, 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 1887 (15 U.S.C. 78o-7 note), 12 U.S.C. 3907, 3909, and 5412(b)(2)(B), 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-l, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371, 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(a), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808, 5371, 5412; and Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); and Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

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

The Order does not apply to independent regulatory agencies.

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

The Order does not apply to independent regulatory agencies.