U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

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July 24, 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 Deposit Insurance Corporation: Assessments, Mitigating the Deposit Insurance Assessment Effect of Participation in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility*

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 Deposit Insurance Corporation (FDIC) entitled "Assessments, Mitigating the Deposit Insurance Assessment Effect of Participation in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility" (RIN: 3064-AF53). We received the rule on July 10, 2020. It was published in the *Federal Register* as a final rule on June 26, 2020. 85 Fed. Reg. 38282. It has an effective date of June 26, 2020, but it has an applicability date of April 1, 2020.

According to FDIC, the final rule mitigates the deposit insurance assessment effects of participating in the Paycheck Protection Program (PPP) established by the Small Business Administration (SBA), and the Paycheck Protection Program Liquidity Facility (PPPLF) and Money Market Mutual Fund Liquidity Facility (MMLF) established by the Board of Governors of the Federal Reserve System. FDIC stated the final rule removes the effect of participation in PPP and borrowings under PPPLF on various risk measures used to calculate an insured depository institution's (IDI) assessment rate; removes the effect of participation in the PPP and MMLF programs on certain adjustments to an IDI's assessment rate; provides an offset to an IDI's assessment for the increase to its assessment base attributable to participation in the PPP and MMLF; and removes the effect of participation in the PPP and MMLF when classifying IDIs as small, large, or highly complex for assessment purposes.

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). FDIC determined it had good cause to waive the 60-day delay because a delay would be contrary to the public interest. In particular, FDIC stated by providing for an immediate effective date for the final rule, it will effectuate the intent of ensuring that IDIs benefit from the mitigation effects to their deposit insurance assessments starting with the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected, and will thereby provide IDIs with certainty regarding the assessment effects of participating in PPP, PPPLF, or MMLF.

Enclosed is our assessment of FDIC'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.

Shirley A. Jones

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc M. Andy Jiminez
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
"ASSESSMENTS, MITIGATING THE DEPOSIT INSURANCE ASSESSMENT EFFECT OF PARTICIPATION IN THE PAYCHECK PROTECTION PROGRAM (PPP), THE PPP LIQUIDITY FACILITY, AND THE MONEY MARKET MUTUAL FUND LIQUIDITY FACILITY"
(RIN: 3064-AF53)

(i) Cost-benefit analysis

The Federal Deposit Insurance Corporation (FDIC) estimated that (1) quarterly deposit insurance assessments would increase for some institutions absent the final rule and (2) the final rule could provide quarterly assessment relief of approximately $150 million. FDIC stated the actual effect of these programs on deposit insurance assessments will vary depending on participation in the programs by insured and non-insured depository institutions, the maturity of borrowings from the Federal Reserve Banks under these programs, the extent of reliance on existing sources of funding for Paycheck Protection Program (PPP) lending, and the types of loans held under PPP.

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

FDIC prepared a regulatory flexibility analysis. FDIC stated that of the 5,125 institutions it insures, 3,771 of them are considered small entities. FDIC estimated the final rule would save small insured depository institutions $10 million in quarterly deposit insurance assessments.

(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, FDIC 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 May 20, 2020, FDIC published a proposed rule. 85 Fed. Reg. 30649. FDIC received 41 comment letters from depository institutions, depository institution holding companies, trade associations, and other interested parties. FDIC addressed these comments in the final rule. FDIC also waived the delay in effective date for good cause. FDIC determined it had good cause for an immediate effective date for the final rule in order to fully effectuate the intent of ensuring that insurance depository institutions benefit from the mitigation effects to their deposit insurance assessments starting with the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected, and to provide IDIs with certainty regarding the assessment effects of participating in PPP, Paycheck Protection Program Liquidity Facility, or Money Market Mutual Fund Liquidity Facility.

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

FDIC determined the final rule affects information collection requirements (ICRs) under the Act. FDIC stated the ICRs are associated with the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051). The associated Office of Management and Budget (OMB) control numbers for the Call Reports are 1557–0081, 3064–0052, and 7100–0036. The ICR is also associated with the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), OMB control number 7100–0032. FDIC stated the ICRs were submitted to OMB.

Statutory authorization for the rule

FDIC promulgated the final rule pursuant to sections 1813, 1815, 1817–1819, and 1821 of title 12, United States Code.

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

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

Executive Order No. 13,132 (Federalism)

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