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November 12, 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 and Total Loss-Absorbing Capacity Rule: Eligible Retained Income*

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; Federal Reserve System; and Federal Deposit Insurance Corporation (the agencies) entitled "Regulatory Capital Rule and Total Loss-Absorbing Capacity Rule: Eligible Retained Income" (RINs: 1557-AE81; 7100-AF77; 7100-AF80; 3064-AF40). We received the rule on October 28, 2020. It was published in the *Federal Register* as a final rule on October 8, 2020. 85 Fed. Reg. 63423. The effective date of the rule is January 1, 2021.

According to the agencies, this final rule finalizes the interim final rule that revises the definition of eligible retained income to make more gradual any automatic limitations on capital distributions that could apply under the agencies' capital rule. 85 Fed. Reg. 15909. Separately, in this final rule, the Federal Reserve System is also adopting as final the revised definition of eligible retained income for purposes of its total loss-absorbing capacity (TLAC) rule, as published in its interim final rule. 85 Fed. Reg. 17003. According to the agencies, the interim final rules revise the definition of eligible retained income to be the greater of (1) a banking organization's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of a banking organization's net income over the preceding four quarters. The agencies state this rule finalizes the revisions made in the interim final rule without change.

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
“REGULATORY CAPITAL RULE AND TOTAL LOSS-ABSORBING
CAPACITY RULE: ELIGIBLE RETAINED INCOME”
(RINS: 1557-AE81; 7100-AF77; 7100-AF80; 3064-AF40)

(i) Cost-benefit analysis

In their submission to us, the Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation (the agencies) indicated that they did not prepare an analysis of the costs and benefits of this final rule.

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

The agencies concluded the requirements of RFA do not apply to this final rule because the final rule adopts, without changes, revisions previously implemented under interim final rules, and there was no general notice of proposed rulemaking associated with this final rule.

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

The agencies state they did not prepare an economic analysis of this final rule under the Act because there was no general notice of proposed rulemaking in connection with this final rule.

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

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

On March 20, 2020, the agencies published the interim final rule with request for comments, revising the definition of eligible retained income for banking organizations subject to their capital rule. 85 Fed. Reg. 15909. Separately, on March 26, 2020, the Board of Governors of the Federal Reserve System (Board) published an interim final rule revising the definition of eligible retained income for purposes of its total loss-absorbing capacity (TLAC) rule. 85 Fed. Reg. 17003. The agencies received five public comment letters on the capital interim final rule and the Board received two public comments on the TLAC interim final rule. The agencies responded to comments in this final rule.

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

The agencies determined the interim final rule, published March 20, 2020, impacts current information collection requirements (ICRs) subject to the Act. The impacted ICRs are associated with the Consolidated Reports of Condition and Income (Call Reports), FFIEC 031,

FFIEC 041, and FFIEC 051 (associated with Office of Management and Budget (OMB) Control Numbers 1557-0081; 3064-0052; and 7100-0036). The agencies stated OMB has reviewed and approved these revisions, and there is no change to Call Reports or their related instructions in connection with this final rule. The Board also revised the Consolidated Financial Statements for Holding Companies (OMB Control Number 7100-0128) in connection with the interim final rule. The agencies state the Board revised the revisions pursuant to authority delegated by OMB and will submit the burden estimates to OMB to finalize the revisions. The agencies estimated the change to the calculation of retained income should be minimal and result in a zero net change in hourly burden under the ICRs.

Statutory authorization for the rule

The agencies promulgated the interim final rule pursuant to sections 93a, 161, 248, 321-338a, 481-486, 1462, 1462a, 1463, 1464, 1467a, 1815, 1816, 1818, 1819, 1828, 1828 note, 1831n, 1831n note, 1831o, 1831p-1, 1831w, 1835, 1844, 1851, 3101 *et seq.*, 3101 note, 3904, 3906-3909, 4808, 5361-5362, 5365-5368, 5371, 5371 note, and 5412 of title 12; and section 78o-7 note of title 15, United States Code; Public Law 115-174, and Public Law 116-136.

Executive Order No. 12866 (Regulatory Planning and Review)

As independent regulatory agencies, the agencies are not subject to the Order.

Executive Order No. 13132 (Federalism)

As independent regulatory agencies, the agencies are not subject to the Order.