U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

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November 18, 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: Treatment of Certain Emergency Facilities in the Regulatory Capital Rule and the Liquidity Coverage Ratio Rule*

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, Federal Deposit Insurance Corporation (collectively, the agencies) entitled "Treatment of Certain Emergency Facilities in the Regulatory Capital Rule and the Liquidity Coverage Ratio Rule" (RINs: 1557–AE89; 1557–AE90; 1557–AE92; 7100–AF85; 7100–AF86; 7100–AF90; 3064–AF41; 3064–AF49; 3064–AF51). We received the rule on November 4, 2020. It was published in the *Federal Register* as a final rule on October 28, 2020. 85 Fed. Reg. 68243. The effective date of the final rule is December 28, 2020.

According to the agencies, the final rule adopts the revisions to the regulatory capital rule and the liquidity coverage ratio (LCR) regulations made under three interim final rules published in the *Federal Register* on March 23, April 13, and May 6, 2020. The agencies state they are adopting these interim final rules as final with no changes. According to the agencies, under this final rule, banking organizations may continue to neutralize the regulatory capital effects of participating in the Money Market Mutual Fund Liquidity Facility (MMLF) and the Paycheck Protection Program Liquidity Facility (PPPLF), and are required to continue to neutralize the LCR effects of participating in the MMLF and the PPPLF. In addition, the agencies state Paycheck Protection Program loans will receive a zero percent risk weight under the agencies' regulatory capital rules.

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). Although the *Congressional Record* does not yet reflect receipt, we were notified that both the House of Representatives and the Senate received the rule on November 6, 2020. Email from Regulations Staffer, Federal Deposit Insurance Corporation to Senior Staff Attorney, GAO, Nov. 10, 2020. It was published in the *Federal Register* on October 28, 2020. 85 Fed. Reg. 68243. The final rule has an effective date of December 28, 2020. Therefore, the final rule does not have the required 60-day in its effective date.

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.

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Enclosure

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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
"TREATMENT OF CERTAIN EMERGENCY FACILITIES IN THE REGULATORY CAPITAL RULE AND THE LIQUIDITY COVERAGE RATIO RULE"
(RINS: 1557–AE89; 1557–AE90; 1557–AE92; 7100–AF85; 7100–AF86; 7100–AF90; 3064–AF41; 3064–AF49; 3064–AF51)

(i) Cost-benefit analysis

The Department of the Treasury, Office of the Comptroller of the Currency, Federal Reserve System, and Federal Deposit Insurance Corporation (collectively, the agencies) did not submit an analysis of the costs and the benefits of the final rule. In their submission to us, the agencies indicated that they considered preparation of an analysis of the costs and benefits of the final rule to be applicable.

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

The agencies determined analysis under the Act was not required because there was no notice of proposed rulemaking associated with the interim final rules or 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 determined analysis under the Act was not required because there was no notice of proposed rulemaking associated with the interim final rules or this final rule.

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

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

The agencies issued interim final rules on March 23, April 13, and May 6, 2020. 85 Fed. Reg. 16232, 20387, 26835. In total for all three interim final rules, the agencies received 17 comments from industry participants, advocacy groups, trade associations, and individuals. The agencies addressed the comments in the final rule.

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

The agencies determined the final rule contains no information collection requirements (ICRs) subject to the Act. However, the final rules does make temporary changes to several previously approved ICRs. Those ICRs are associated with Office of Management and Budget Control Numbers 1557–0081; 1557–0239; 3064–0052; 3064–0159; 7100–0032; 7100–0036; 7100–0128; 7100–0319; and 7100–0361.

Statutory authorization for the rule

The agencies promulgated the final rule pursuant to sections 1 *et seq.*, 93a, 161, 241, 248, 321–338a, 481–486, 1462 *et seq.*, 1815, 1816, 1818, 1819, 1828, 1828 note, 1831n, 1831n note, 1831o, 1831o–1, 1831p–1, 1831w, 1835, 1851, 3101 *et seq.*, 3904, 3906–3909, 4808, 5365, 5366, 5368, 5371, 5371 note, and 5412 of title 12; and section 78o–7 note of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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