

441 G St. N.W.
Washington, DC 20548

B-332916

February 5, 2021

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

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Republican Leader
Committee on Ways and Means
House of Representatives

Subject: *Federal Deposit Insurance Corporation: Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions*

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 “Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions” (RINs: 3064-AE94; 3064-AF02). We received the rule on January 22, 2021. It was published in the *Federal Register* as a final rule on January 22, 2021. 86 Fed. Reg. 6742. The effective date of the rule is April 1, 2021, with an extended compliance date of January 1, 2022.

FDIC states this final rule finalizes revisions to the regulations relating to the brokered deposits and interest rate restrictions that apply to less than well capitalized insured depository institutions. According to FDIC, for brokered deposits, the rule establishes a new framework for analyzing certain provisions of the “deposit broker” definition, including “facilitating” and “primary purpose.” For the interest rate restrictions, FDIC states it is amending its methodology for calculating the national rate, the national rate cap, and the local market rate cap. Further, FDIC states that the rule explains when nonmaturity deposits are accepted and when nonmaturity deposits are solicited for purposes of applying the brokered deposits and interest rate restrictions.

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
Managing Associate General Counsel

Enclosure

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

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
“UNSAFE AND UNSOUND BANKING PRACTICES:
BROKERED DEPOSITS AND INTEREST RATE RESTRICTIONS”
(RINs: 3064-AE94; 3064-AF02)

(i) Cost-benefit analysis

In its submission to us, the Federal Deposit Insurance Corporation (FDIC) indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

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

FDIC certified that this final rule will not have a significant economic effect on a substantial number of small entities.

(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 February 6, 2019, FDIC published an advance notice of proposed rulemaking (ANPR) on all aspects of FDIC’s brokered deposit and interest rate regulations. 84 Fed. Reg. 2366. FDIC received over 130 comments on the ANPR from individuals, banking organizations, non-profits, as well as industry and trade groups, representing banks, insurance companies, and the broader financial services industry. FDIC stated that, to better address commenters’ concerns, it decided to issue separate proposed rulemakings, one relating to interest rate caps and another relating to proposed changes other than those relating to interest rate caps.

On September 4, 2019, FDIC published the proposed rule relating to interest rate caps. 84 Fed. Reg. 46470. FDIC received 43 comments from national associations representing stakeholders in the banking industry, state-level associations representing stakeholders in the banking industry, a trade association, a state banking department, a law firm on behalf of a bank, and bankers or banks. On February 10, 2020, FDIC published the proposed rule on changes to its brokered deposit regulation other than the interest rate caps. 85 Fed. Reg. 7453. FDIC received over 160 comments from individuals, banking organizations, non-profits, as well as industry and trade groups representing banks, insurance companies, and the broader financial services industry. FDIC responded to comments in this final rule.

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

FDIC determined that this final rule contains information collection requirements (ICR) under the Act. FDIC stated the ICRs are being submitted to the Office of Management and Budget (OMB) for review and approval. According to FDIC, it is revising its existing ICR entitled "Application for Waiver of Prohibition on Acceptance of Brokered Deposits" (OMB Control Number 3064-0099) and renaming the ICR to "Reporting Requirements for Brokered Deposits." FDIC estimates the total annual burden hours for the ICR to be 6,281.5 hours.

Statutory authorization for the rule

FDIC promulgated this final rule pursuant to sections 378, 1464, 1813, 1815, 1817, 1818, 1819(a), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, and 5415 of title 12; and sections 1601-1607 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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