

441 G St. N.W.  
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April 7, 2021

The Honorable Sherrod Brown  
Chairman  
The Honorable Patrick J. Toomey  
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: Emergency Capital Investment Program

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 (together, the agencies) entitled “Regulatory Capital Rule: Emergency Capital Investment Program” (RINs: 1557-AF09; 7100-AG11; 3064-F73). We received the rule on March 26, 2021. It was published in the *Federal Register* as an interim final rule; request for public comment on March 22, 2021. 86 Fed. Reg. 15076. The stated effective date of the rule is March 22, 2021.

The agencies state that they are issuing this interim final rule in order to support and facilitate the timely implementation and acceptance of the congressionally authorized Emergency Capital Investment Program (ECIP) for the Department of the Treasury to make capital investments in low- and moderate-income community financial institutions. According to the agencies, this rule provides that preferred stock issued under ECIP qualifies as additional tier 1 capital and that subordinated debt issued under ECIP qualifies as tier 2 capital under the agencies’ capital rule.

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. §§ 553(b)(3)(B), 808(2). The agencies stated that they believe the public interest is best served by implementing this interim final rule immediately to facilitate implementation of ECIP. According to the agencies, the purpose of the capital investment made under ECIP is to support the efforts of low- and moderate-income community

financial institutions and the communities they serve, which may be disproportionately impacted by the economic effects of the COVID-19 event. The agencies also note that the Treasury's authority to make new capital investments in ECIP ends 6 months after the date on which the national emergency concerning the COVID-19 outbreak declared on March 13, 2020, under the National Emergencies Act terminates. 50 U.S.C. §§ 1601-1651. For these reasons, the agencies found that there is good cause consistent with the public interest to issue the interim final rule with an immediate effective date. The agencies also state that, because this interim final rule relieves a restriction, it is exempt from the delayed effective date under the Administrative Procedure Act. 5 U.S.C. § 553(d)(1).

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: 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  
DEPARTMENT OF TREASURY,  
OFFICE OF THE COMPTROLLER OF THE CURRENCY;  
FEDERAL RESERVE SYSTEM;  
FEDERAL DEPOSIT INSURANCE CORPORATION  
ENTITLED  
“REGULATORY CAPITAL RULE:  
EMERGENCY CAPITAL INVESTMENT PROGRAM”  
(RIN: 1557-AF09; 7100-AG11; 3064-F73)

(i) Cost-benefit analysis

In their submission to us, the Department of the Treasury, Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) indicated that they consider preparation of an analysis of the costs and benefits of this interim 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

The agencies stated that the requirements of the Act relating to initial and final regulatory flexibility analysis do not apply to this interim final rule because the agencies have determined that publication of a general notice of proposed rulemaking is not in the public interest.

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

The agencies stated that the requirements of the Act do not apply to this interim final rule because the agencies have determined that publication of a general notice of proposed rulemaking is not in the public interest.

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

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

The agencies stated that they believe the public interest is best served by implementing the interim final rule immediately without advance notice and comment to facilitate the implementation of the Emergency Capital Investment Program (ECIP). According to the agencies, the purpose of the capital investment made under ECIP is to support the efforts of low- and moderate-income community financial institutions and the communities they serve, which may be disproportionately impacted by the economic effects of the COVID-19 event. The agencies also note that the Treasury’s authority to make new capital investments in ECIP ends 6 months after the date on which the national emergency concerning the COVID-19 outbreak declared on March 13, 2020, under the National Emergencies Act terminates. 50 U.S.C. §§ 1601-1651. For these reasons, the agencies found that there is good cause consistent with the public interest to issue this interim final rule without advance notice and comment and with an immediate effective date. 5 U.S.C. §§ 553(b)(3)(B), (d)(3). The agencies also stated that,

because this interim final rule relieves a restriction, it is exempt from the delayed effective date under the Administrative Procedure Act. 5 U.S.C. § 553(d)(1). Notwithstanding the exemption, the agencies requested comments on all aspects of the interim final rule by May 21, 2021.

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

The agencies determined that this interim final rule does not introduce any new information collections or revise any existing information collections under the Act. In addition, the Board states that it has reviewed this interim final rule pursuant to the authority delegated by the Office of Management and Budget (OMB). Therefore, the agencies state that no submissions will be made by them to OMB for review under the Act.

Statutory authorization for the rule

OCC and the Board promulgated this interim final rule pursuant to various sections of title 12 of the United States Code and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). FDIC promulgated this rule pursuant to various sections of title 12; and sections 78o-7 note and 9052 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.