

November 2011

# DODD-FRANK ACT REGULATIONS

## Implementation Could Benefit from Additional Analyses and Coordination

On November 30, 2011, the list of congressional addressees on page 42 of this report was updated.

U.S. Government Accountability Office

The logo features the letters "GAO" in a large, bold, serif font. To the right of "GAO" is a large, stylized number "90" in a light gray, sans-serif font. The "9" and the first "0" of "90" are partially overlapping.

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## DODD-FRANK ACT REGULATIONS

### Implementation Could Benefit from Additional Analyses and Coordination

#### Why GAO Did This Study

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires or authorizes various federal financial regulators to issue hundreds of rules to implement reforms intended to strengthen the financial services industry. GAO is required to annually study financial services regulations. This report examines (1) the regulatory analyses, including cost-benefit analyses, financial regulators have performed to assess the impact of selected final rules issued pursuant to the Dodd-Frank Act; (2) how financial regulators consulted with each other in implementing the selected final rules to avoid duplication or conflicts; and (3) what is known about the impact of the final rules. GAO examined the 32 final Dodd-Frank Act rules in effect as of July 21, 2011; the regulatory analyses conducted for 10 of the 32 rules that allowed for some level of agency discretion; statutes and executive orders requiring agencies to perform regulatory analysis; and studies on the impact of the Dodd-Frank Act. GAO also interviewed regulators, academics, and industry representatives.

#### What GAO Recommends

GAO is making four recommendations to the regulators and FSOC to strengthen the prospective and retrospective analyses of the impact of Dodd-Frank Act regulations on financial markets and improve coordination among financial regulators on rulemaking. Regulators and FSOC generally agreed with the report's findings but most neither agreed nor disagreed with the report's recommendations.

View [GAO-12-151](#). For more information, contact A. Nicole Clowers at (202) 512-8678 or [clowersa@gao.gov](mailto:clowersa@gao.gov)

#### What GAO Found

Federal financial regulators are required to conduct a variety of regulatory analyses, but the requirements vary and none of the regulators are required to conduct benefit-cost analysis. All financial regulators must analyze the paperwork burden imposed by their rules and consider the impact of their rules on small entities as part of their rulemaking process. The Commodity Futures Trading Commission and the Securities and Exchange Commission are also required under their authorizing statutes to consider certain benefits and costs of their rules. As independent regulatory agencies, the federal financial regulators are not subject to executive orders requiring federal agencies to conduct detailed benefit-cost analysis in accordance with a guidance issued by the Office of Management and Budget (OMB). Financial regulators are not required to follow OMB's guidance, but most told GAO that they attempt to follow the guidance in principle or spirit. GAO's review of regulators' rulemaking policies and 10 final rules found inconsistencies in the extent to which OMB's guidance was reflected. GAO recommends that to the extent the regulators strive to follow OMB's guidance, they should take steps to more fully incorporate the guidance into their rulemaking policies and ensure that it is consistently followed.

Although federal financial regulators have coordinated their rulemaking, they generally lacked formal policies to guide these efforts. The Dodd-Frank Act establishes interagency coordination requirements for certain agencies and for specific rules or subject matters. However, for other rules, the regulators have discretion as to whether interagency coordination should occur. The Financial Stability Oversight Council (FSOC) is tasked with facilitating coordination among member agencies but, to date, has played a limited role in doing so beyond its own rulemakings as it continues to define its role. Several regulators voluntarily coordinated with each other on some of the rules GAO reviewed. However, most of the regulators, including the Bureau of Consumer Financial Protection, lacked written protocols for interagency coordination, a leading practice that GAO has previously identified for interagency coordination. GAO recommends that FSOC work with the financial regulators to develop such protocols for Dodd-Frank Act rulemaking.

Little is known about the actual impact of the final Dodd-Frank Act rules, given the short amount of time the rules have been in effect. Regulators are required to conduct reviews of existing regulations to assess their impact, but some have not yet developed plans to review their Dodd-Frank Act rules. To maximize the usefulness of these reviews, GAO recommends that the regulators identify what data will be needed to retrospectively assess the impact of the rules in the future. FSOC is also required to examine, among other things, financial market and regulatory developments and make recommendations to enhance the efficiency, competitiveness, and stability of U.S. financial markets. Although FSOC officials said that FSOC plans to include an impact analysis of the Dodd-Frank Act rules in its future reports, it has not yet begun identifying and collecting the data needed for this type of analysis. GAO recommends that FSOC direct the Office of Financial Research, an entity created to support the research needs of FSOC, to work with the regulators to identify and begin collecting data needed for future analyses.

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## Abbreviations

ABS	asset-backed securities
APA	Administrative Procedure Act
CFPB	Bureau of Consumer Financial Protection
CFTC	Commodity Futures Trading Commission
CRA	Congressional Review Act
EGRPRA	Economic Growth and Regulatory Paperwork Reduction Act of 1996
E.O.	executive order
FCM	futures commission merchant
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FSOC	Financial Stability Oversight Council
NCUA	National Credit Union Administration
NRSRO	nationally recognized statistical rating organization
OCC	Office of the Comptroller of the Currency
OIRA	OMB's Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OTS	Office of Thrift Supervision
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RFED	retail foreign exchange dealers
SEC	Securities and Exchange Commission
SRO	self-regulatory organization
UMRA	Unfunded Mandates Reform Act of 1995

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United States Government Accountability Office  
Washington, DC 20548

November 10, 2011

## Congressional Addresses

The recent U.S. financial crisis is often described as the worst since the Great Depression, resulting in the loss of trillions of dollars in household wealth.<sup>1</sup> The crisis threatened the stability of the U.S. financial system and the solvency of some large financial institutions, prompting the U.S. government to take extraordinary steps to moderate the adverse economic impacts. In response to the crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, which includes numerous reforms to strengthen oversight of financial services firms and consolidate certain consumer protection responsibilities in the Bureau of Consumer Financial Protection (CFPB).<sup>2</sup> The Dodd-Frank Act requires or authorizes various federal agencies to issue hundreds of regulations to implement its reforms. As agencies have turned their attention to developing and implementing these regulations, some industry associations and others have raised concerns about the potential impact of the regulations, individually and cumulatively, on financial markets and both financial and nonfinancial institutions.

Agencies can anticipate and evaluate the consequences of their regulations through regulatory analysis. Such analysis provides a formal way of organizing evidence that can help in understanding potential effects of new regulations. Benefit-cost analysis, the primary tool used for regulatory analysis, helps to identify the regulatory alternatives with the greatest net benefits. We, along with the Office of Management and Budget (OMB) and others, have identified benefit-cost analysis as a useful tool that can inform decision making where agencies have discretion to choose between regulatory alternatives, noting that the systematic process of determining costs and benefits helps decision makers organize and evaluate information about, and help identify trade-offs among, alternatives. Because of the merits of benefit-cost analysis,

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<sup>1</sup> Federal Reserve Flow of Funds database (Mar. 6, 2008, and Mar. 11, 2010). Available at <http://www.federalreserve.gov/releases/z1>.

<sup>2</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010). Title X of the Dodd-Frank Act, also called the Consumer Financial Protection Act of 2010, creates CFPB as a new executive branch agency to enforce certain existing federal consumer protection laws and promulgate new rules regarding federal consumer financial laws.

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many agencies are directed by statute or executive order to conduct such analysis as part of rulemaking. For example, Executive Order 12866 (E.O. 12866) requires executive agencies to assess anticipated costs and benefits not only of the proposed regulatory action but also of any alternatives.<sup>3</sup> However, this executive order does not apply to independent regulatory agencies, including the banking, futures, and securities regulators (i.e., federal financial regulators).<sup>4</sup>

Section 1573(a) of the Department of Defense and Full-Year Continuing Appropriations Act of 2011 amends the Dodd-Frank Act and directs GAO to conduct an annual study of financial services regulations, including the activities of CFPB.<sup>5</sup> Specifically, we are directed to analyze (1) the impact of regulations on the financial marketplace, including whether relevant federal agencies are applying sound benefit-cost analysis in promulgating rules; (2) efforts to avoid duplicative or conflicting rulemakings, information requests, and examinations; and (3) other related matters that we deem to be appropriate.<sup>6</sup> As agreed with congressional staff, the focus of our current review and future reviews will be limited to the financial regulations promulgated pursuant to the Dodd-Frank Act, and for this first report, the Dodd-Frank Act regulations that were effective as of July 21, 2011. This report examines

- the regulatory analyses, including benefit-cost analyses, that federal financial regulators have performed to assess the potential impact of selected final rules issued pursuant to the Dodd-Frank Act;
- consultation among federal financial regulators in implementing selected final rules issued pursuant to the Dodd-Frank Act to avoid duplication or conflicts; and
- available information on the impact of the final Dodd-Frank Act regulations.

To address these objectives, we reviewed all final rules—a total of 32—that were issued pursuant to the Dodd-Frank Act and were effective as of

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<sup>3</sup> Executive Order No. 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

<sup>4</sup> Independent regulatory agencies are those defined by 44 U.S.C. § 3502(5).

<sup>5</sup> Pub. L. No. 112-10, § 1573(a), 125 Stat. 38, 138-39 (2011) (codified at 12 U.S.C. § 5496b).

<sup>6</sup> *Id.*

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July 21, 2011.<sup>7</sup> We selected 10 of these for further review and compared the analyses conducted to assess them in light of the principles outlined in OMB Circular A-4.<sup>8</sup> Circular A-4 provides guidance to federal agencies on the development of regulatory analysis and was subject to public comment, interagency review, and peer review. We selected the rules for further review based primarily on the amount of discretion that agency officials were able to exercise in implementing the specific Dodd-Frank Act provision. We interviewed agency officials and reviewed documentation from the agencies to determine the extent to which benefit-cost or similar analyses were conducted. We also reviewed statutes, regulations, and other documentation to identify the analysis federal financial regulators were required to conduct and interviewed agency officials about their plans to analyze the effects of their Dodd-Frank Act regulations. Further, we identified requirements in the Dodd-Frank Act and other laws for agency coordination on rulemaking and assessed the extent to which such requirements were satisfied for select regulations that were in effect as of July 21, 2011. We collected information from the federal financial regulators on their policies and practices for coordinating their rulemaking activities with other regulators and about their coordination efforts specific to the selected Dodd-Frank Act regulations that were effective as of July 21, 2011. We selected 18 rules based primarily on our judgment of the extent to which the rules could overlap or duplicate rules issued by other agencies. We also reviewed past GAO work on best practices for regulatory coordination and compared the requirements for coordination among federal financial regulators to these practices to identify any areas of needed improvement.

To examine what is known about the impact of the Dodd-Frank Act regulations, we reviewed existing research and interviewed financial regulators, industry representatives, academics, and others. We also

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<sup>7</sup> We use the term “rules” in this report generally to refer to Federal Register notices of agency action pursuant to the Dodd-Frank Act, including regulations, interpretive rules, general statements of policy, and rules that deal with agency organization, procedure, or practice.

<sup>8</sup> As independent regulatory agencies that are not required to follow the economic analysis requirements of E.O. 12,866, the financial regulators are also not required to follow OMB Circular A-4. We used Circular A-4 as an example of best practices for agencies to follow when conducting their regulatory analyses and therefore used it as criteria for this report.

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collected information from the regulators on the extent to which the Dodd-Frank Act rules effective as of July 21, 2011, could impact certain variables (such as the safety and soundness of regulated entities, cost and availability of credit, and costs of compliance with the rules) or produce other costs and benefits. We examined the indicators and data that federal financial regulators used, or planned to use, to assess the impact of their regulations. We reviewed studies on the impact of the Dodd-Frank Act regulations and assessed the strengths and weaknesses of the impact analyses contained in these studies. Appendix I contains additional information on our scope and methodology.

This report does not independently assess the impact of the Dodd-Frank Act regulations because (1) most of the required regulations have not been finalized or the effective dates of finalized rules have not been reached or (2) for the final regulations that have reached their effective dates, adequate time has not elapsed to assess their impacts. In addition to conducting audit work to address the objectives in this report, we also began constructing a framework for our independent analyses in future reports. While the construction of the framework continues, it may include identifying and analyzing data to develop indicators or other measures to assess the impact of the Dodd-Frank Act regulations. Developing a methodology to assess the impact of Dodd-Frank Act regulations will be a long-term, iterative process, during which we will seek the input of federal financial regulators, the industry, and other stakeholders.

We conducted this performance audit between April 2011 and November 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The financial services industry—including the banking, securities, and futures sectors—has changed significantly over the last several decades. Today, the industry generally consists of fewer and larger firms that provide more and varied services, offer similar products, and operate in increasingly global markets. Despite these changes, the U.S. financial regulatory structure has largely remained the same. It is a complex system of multiple federal and state regulators as well as self-regulatory organizations (SRO) that operate largely along functional lines, even as these lines have become increasingly blurred in the industry. The U.S.

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regulatory system for financial services is described as “functional” in that financial products or activities are generally regulated according to their function, no matter who offers the product or participates in the activity.<sup>9</sup>

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## Depository Institution Regulators

In the banking industry, the specific regulatory configuration depends on the type of charter the banking institution chooses. Depository institution charter types include

- *commercial banks*, which originally focused on the banking needs of businesses but over time have broadened their services;
- *thrifts*, which include savings banks, savings associations, and savings and loans and were originally created to serve the needs—particularly the mortgage needs—of those not served by commercial banks; and
- *credit unions*, which are member-owned cooperatives run by member-elected boards with an historical emphasis on serving people of modest means.

These charters may be obtained at the state or federal level. State regulators charter institutions and participate in their oversight, but all institutions that offer federal deposit insurance have a primary federal regulator. The primary federal banking regulators—all of which may issue regulations and take enforcement actions against industry participants within their jurisdiction—are identified in table 1.

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<sup>9</sup> See GAO, *Financial Regulation: Industry Trends Continue to Challenge the Federal Regulatory Structure*, [GAO-08-32](#) (Washington, D.C.: Oct. 12, 2007).

**Table 1: Primary Federal Banking Regulators and Their Basic Functions**

Agency	Basic Function
Office of the Comptroller of the Currency (OCC)	Charters and supervises national banks and federal thrifts
Board of Governors of the Federal Reserve System (Federal Reserve Board)	Supervises state-chartered banks that opt to be members of the Federal Reserve System, bank holding companies, thrift holding companies, and the nondepository institution subsidiaries of those institutions
Federal Deposit Insurance Corporation (FDIC)	Supervises FDIC-insured state-chartered banks that are not members of the Federal Reserve System, as well as federally insured state savings banks and thrifts; insures the deposits of all banks and thrifts that are approved for federal deposit insurance; and resolves all failed insured banks and thrifts and certain nonbank financial companies
National Credit Union Administration (NCUA)	Charters and supervises federally chartered credit unions and insures savings in federal and most state-chartered credit unions

Source: GAO.

Note: The Dodd-Frank Act eliminated the Office of Thrift Supervision (OTS), which chartered and supervised federally chartered savings institutions and savings and loan holding companies. Rulemaking authority previously vested in the OTS was transferred to the OCC for savings associations and to the Federal Reserve Board for savings and loan holding companies. Supervisory authority was transferred to the OCC for federal savings associations, to the FDIC for state savings associations, and to the Federal Reserve Board for savings and loan holding companies and their subsidiaries, other than depository institutions. The transfer of these powers was completed on July 21, 2011, and OTS was officially dissolved 90 days later (Oct. 19, 2011).

## Securities and Futures Regulators

The securities and futures industries are regulated under a combination of self-regulation (subject to oversight by the appropriate federal regulator) and direct oversight by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), respectively. SEC regulates the securities markets, including participants such as securities exchanges, broker-dealers, investment companies, and investment advisers. In the securities industry, certain SROs—including the securities exchanges and the Financial Industry Regulatory Authority—have responsibility for overseeing the securities markets and their members; establishing the standards under which their members conduct business; monitoring business conduct; and bringing disciplinary actions against members for violating applicable federal statutes, SEC's rules, and their own rules. SEC oversees SROs by inspecting their operations and reviewing their rule proposals and appeals of final disciplinary proceedings. In overseeing the SROs' implementation and enforcement of rules, SEC uses its statutory authority to, among other things, review and approve SRO-proposed rule changes, approve or disapprove proposals that are subject to SEC action before they can become operative, or suspend for additional proceedings proposals that were designated by an SRO for immediate effectiveness. In the futures industry, SROs include the futures exchanges and the National Futures

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Association.<sup>10</sup> Futures SROs are responsible for establishing and enforcing rules governing member conduct and trading; providing for the prevention of market manipulation, including monitoring trading activity; ensuring that futures industry professionals meet qualifications; and examining members for financial strength and other regulatory purposes. CFTC independently monitors, among other things, exchange trading activity, large trader positions, and certain market participants' financial conditions.

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## Regulations and Federal Rulemaking

Regulation is one of the principal tools that the federal government uses to implement public policy. Section 553 of the Administrative Procedure Act (APA) contains requirements for the most common type of federal rulemaking—"informal rulemaking" or "notice and comment" rulemaking.<sup>11</sup> Most federal rulemaking is conducted as informal rulemaking, in which agencies publish a notice of proposed rulemaking in the Federal Register and provide "interested persons" with an opportunity to comment on the proposed rule, generally for a period of at least 30 days.<sup>12</sup> Under the APA, in addition to allowing for comments, an agency may choose to hold public hearings during the comment period for informal rulemaking but is not required to do so. After giving interested persons an opportunity to comment on the proposed rule, and after considering the public comments, the agency then publishes the final rule, incorporating a general statement of the rule's basis and purpose. The APA's notice and comment procedures do not apply to certain categories of rules, including interpretative rules, general statements of policy, or rules that deal with agency organization, procedure, or practice, or when the agency for good cause finds that notice and public procedures thereon are impracticable,

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<sup>10</sup> For further information on regulation of futures markets, see GAO, *Financial Regulation: Industry Changes Prompt Need to Reconsider U.S. Regulatory Structure*, [GAO-05-61](#) (Washington, D.C.: Oct. 6, 2004), 34.

<sup>11</sup> The APA also contains requirements for formal rulemaking, which is used in rate-making proceedings and other cases involving a statute that requires rules to be made "on the record." Formal rulemaking incorporates evidentiary (or "trial type") hearings, in which interested parties may present evidence, conduct cross-examinations of other witnesses, and submit rebuttal evidence. However, few statutes require such on-the-record hearings.

<sup>12</sup> 5 U.S.C. § 553. The notice is to contain (1) a statement of the time, place, and nature of public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

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unnecessary or contrary to the public interest. The APA has been in place for more than 60 years, but most additional statutory requirements for rulemaking have been imposed more recently.

As part of the rulemaking process, past and current Congresses and Presidents have required agencies to comply with an increasing number of procedural and analytical requirements before issuing a rule. Some regulatory analysis requirements apply only to executive agencies, while others also apply to independent regulatory agencies such as the federal financial regulators. The goals of these requirements include promoting public participation in rulemaking, reducing regulatory burdens, requiring more rigorous regulatory analysis, and enhancing oversight of agency rulemaking. These requirements entail a wide range of procedural, consultative, and analytical actions on the part of the agencies and are discussed in further detail in this report.

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## Dodd-Frank Act Regulations

Under the Dodd-Frank Act, federal financial regulatory agencies are directed or have the authority to issue hundreds of regulations to implement the act's reforms. The Dodd-Frank Act directs agencies to adopt regulations to implement the act's provisions and in some cases gives the agencies little or no discretion in deciding how to implement the provisions. For instance, the Dodd-Frank Act made permanent a temporary increase in the FDIC deposit insurance coverage amount (\$100,000 to \$250,000); therefore, FDIC revised its implementing regulation to conform to the change. However, other rulemaking provisions in the act appear to be discretionary in nature, stating that (1) certain agencies may issue rules to implement particular provisions or that the agencies may issue regulations that they decide are "necessary and appropriate," or (2) agencies must issue regulations to implement particular provisions but have some level of discretion as to the substance of the regulations. As a result, the agencies may decide to promulgate rules for all, some, or none of the provisions, and often have broad discretion to decide what these rules will contain.

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## Requirements for Regulatory Analyses Vary, but Federal Financial Regulators Are Not Required to Conduct Benefit-Cost Analysis

As part of the rulemaking process, federal financial regulatory agencies are required to conduct a variety of regulatory analyses, but benefit-cost analysis is not among the requirements. Requirements include those set out in the Paperwork Reduction Act (PRA) and the Regulatory Flexibility Act (RFA), which impose regulatory analysis requirements on federal agencies, including the federal financial regulators.<sup>13</sup> In particular, PRA requires agencies to justify any collection of information from the public to minimize the paperwork burden the collection imposes and to maximize the practical utility of the information collected.<sup>14</sup> Under PRA, agencies are required to submit all proposed information collections to OMB's Office of Information and Regulatory Affairs (OIRA) for review and approval.<sup>15</sup> As a result of PRA, agencies also estimate the time and expense required to comply with the paperwork requirements contained in the rule. RFA requires federal agencies to (1) assess the impact of their regulation on small entities, including businesses, governmental jurisdictions, and certain not-for-profit organizations with characteristics set forth in the act, and (2) consider regulatory alternatives to lessen the regulatory burden on small entities.<sup>16</sup> Under RFA, federal agencies, including federal financial regulators, generally must prepare a "regulatory flexibility analysis" in connection with proposed and certain final rules, unless the head of the issuing agency certifies that the proposed rule would not have a significant economic impact upon a substantial number of small entities.<sup>17</sup> While both PRA and RFA require agencies to assess various impacts of their rules, they do not require the agencies to formally assess the costs and benefits of their rules through a benefit-cost or similar analysis. See appendix II for more information about these and other statutes.

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<sup>13</sup> Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520); Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>14</sup> 44 U.S.C. § 3504.

<sup>15</sup> PRA generally defines a "collection of information" as the obtaining or disclosure of facts or opinions by or for an agency from 10 or more nonfederal persons. 44 U.S.C. § 3502(3). Many information collections, recordkeeping requirements, and third-party disclosures are contained in or are authorized by regulations as monitoring or enforcement tools, while others appear in separate written questionnaires for purposes of developing the regulation.

<sup>16</sup> 5 U.S.C. § 603.

<sup>17</sup> 5 U.S.C. §§ 603-605.

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In addition to these generic requirements, certain federal financial regulators are required by their authorizing or other statutes to consider specific benefits, costs, and impacts of their rulemaking. However, as described below, these statutes require the regulators to consider certain benefits, costs, and impacts of their regulations, but the statutes do not prescribe a specific methodology for benefit-cost or similar analyses.

- Under Section 15(a) of the Commodity Exchange Act, CFTC is required to consider the costs and benefits of its actions before issuing a rulemaking under the act.<sup>18</sup> Section 15(a) does not require CFTC to quantify the costs and benefits of a new regulation or determine whether the benefits outweigh its costs; rather, it requires CFTC to consider the costs and benefits of its actions. Section 15(a) further specifies that costs and benefits be evaluated in light of five broad areas of market and public concern: (1) the protection of market participants and the public; (2) the efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.
- Under section 1022(b) of the Consumer Financial Protection Act (Title X of the Dodd-Frank Act), CFPB must consider the potential benefits and costs to consumers and providers of consumer financial products and services, including any potential reduction in consumers' access to consumer financial products or services that might result from the rule, as well as the impact of proposed rules on depository institutions and credit unions with \$10 billion or less in assets and consumers in rural areas.<sup>19</sup> In addition, under section 1100G(d)(1) of the Dodd-Frank Act, CFPB is required to include in its initial regulatory flexibility analysis a description of any projected increase in the cost of credit for small entities and any significant alternatives to the proposed rule that accomplish the same objectives but minimize any increase in the cost of credit for small entities.<sup>20</sup>

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<sup>18</sup> § 15(a), 42 Stat. 998 (1922) (codified, as amended, at 7 U.S.C. §19(a).

<sup>19</sup> Under the act, a "covered person" is "any person that engages in offering or providing a consumer financial product or service; and any affiliate of such a person if such affiliate acts as a service provider to such person." 12 U.S.C. § 5481(6). See also 12 U.S.C. § 5512(b)(2). This requirement refers to depository institutions and credit unions with \$10 billion or less in assets, as described in section 1026(a) of the Consumer Financial Protection Act.

<sup>20</sup> 5 U.S.C. §§ 603(d), 604(a).

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- The National Securities Market Improvement Act of 1996, which amended the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, requires SEC, when engaged in rulemaking that requires it, to consider or determine whether an action is necessary or appropriate to the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation during the rulemaking process.<sup>21</sup> Additionally, Section 23(a)(2) of the Securities Exchange Act requires SEC to consider the impact that any rule promulgated under the act would have on competition.<sup>22</sup> This provision states that a rule should not be adopted if it would impose a burden on competition that is not necessary or appropriate to the act's purposes.
  - Section 302 of the Riegle Community Development and Regulatory Improvement Act requires federal banking regulators to consider certain factors in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions.<sup>23</sup> These factors include any administrative burdens the regulations would place on depository institutions, including small depository institutions and customers of depository institutions and the benefits of the regulations.

In addition to statutory requirements, certain executive orders, namely E.O. 12866, require some federal agencies to assess the economic effects of their significant rules.<sup>24</sup> However, the federal financial regulators, as independent regulatory agencies, are not subject to the

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<sup>21</sup> Pub. L. No. 104-290, § 106(a), 110 Stat. 3416, 3424 (1996) (codified at 15 U.S.C. § 77b(b)). Conforming amendments to the Investment Advisers Act of 1940 were made in section 224 of the Gramm Leach Bliley Act. Pub. L. No. 106-102, § 224, 113 Stat. 1338, 1402 (1999) (codified at 15 U.S.C. § 80b-2(c)).

<sup>22</sup> § 23(a)(2), 48 Stat. 881 (1934) (codified at 15 U.S.C. § 78w(a)(2)).

<sup>23</sup> Pub. L. No. 103-325, § 302, 108 Stat. 2160, 2214-15 (1994) (codified at 12 U.S.C. § 4802).

<sup>24</sup> Executive Order No. 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993). For significant rules (those with an annual effect on the economy of \$100 million or more), the order further requires agencies to prepare a detailed regulatory (or economic) analysis of both the costs and benefits.

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economic analysis requirements of E.O. 12866.<sup>25</sup> The order contains 12 principles of regulation that direct agencies to perform specific analyses to identify the problem to be addressed, assess its significance, assess both the costs and benefits of the intended regulation, design the regulation in the most cost-effective manner to achieve the regulatory objective, and base decisions on the best reasonably obtained information available. In 2003, OMB issued Circular A-4 to provide guidance to federal agencies on the development of regulatory analysis required by E.O. 12866 (now supplemented by Executive Order 13563 (E.O. 13563)).<sup>26</sup> The guidance defines good regulatory analysis and standardizes the way benefits and costs of federal regulatory actions should be measured and reported. In particular, the guidance provides for more systematic evaluation of qualitative and quantitative benefits and costs, including how to monetize them (fig. 1).<sup>27</sup> OMB subjected its guidance to public comment, interagency review, and peer review. Although federal financial regulatory agencies are not required to follow E.O. 12866 or OMB Circular A-4, CFTC, Federal Reserve Board, FDIC, NCUA, OCC, and SEC officials have said that their agencies follow OMB's guidance in spirit or principle. CFPB officials also said that the Bureau expects to follow the spirit of OMB's guidance.

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<sup>25</sup> More recently, Executive Order 13563 supplements E.O. 12866, in part by incorporating its principles, structures, and definitions. Exec. Order 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011). Prior to the Dodd Frank Act, OCC was subject to E.O. 12866 and thus assessed the benefits and costs of economically significant rulemakings. The Dodd-Frank Act amended 44 U.S.C. § 3502(5) so that OCC is now an independent regulatory agency. OCC is currently revising its rulemaking policies and procedures to reflect this change. This change places OCC in the same position as the other federal financial regulators with which OCC often writes joint rules.

<sup>26</sup> Office of Management and Budget, Circular A-4: Regulatory Analysis, September 17, 2003. Circular A-4 replaces OMB's "best practices" guidance issued in 1996 and 2000. Executive Order 13579 (E.O. 13579) encourages independent regulatory agencies to comply with E.O. 13563. E. O. 13579, 76 Fed. Reg. 41587 (July 14, 2011).

<sup>27</sup> OMB Circular A-4.

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**Table 2: Selected Elements of OMB’s Circular A-4**

According to OMB Circular A-4, a good regulatory analysis should include the following three basic elements: (1) a statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs—quantitative and qualitative—of the proposed action and the main alternatives identified by the analysis.

To evaluate properly the benefits and costs of regulations and their alternatives, the regulatory analysis should:

- Explain how the actions required by the rule are linked to the expected benefits. A similar analysis should be done for each of the alternatives.
- Identify a baseline. Benefits and costs are defined in comparison with a clearly stated alternative.
- Identify the expected undesirable side-effects and ancillary benefits of the proposed regulatory action and the alternatives.

A complete regulatory analysis includes a discussion of nonquantified and quantified benefits and costs. When the analysis is complete, the analysis should present a summary of the benefit and cost estimates for each alternative, including the qualitative and nonmonetized factors affected by the rule, so that readers can evaluate them.

In developing benefit and cost estimates, Circular A-4 recommends that the analysis (1) include separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs, and express the estimates in constant, undiscounted dollars; (2) list the benefits and costs that can be quantified, but not monetized, including their timing; (3) describe benefits and costs that cannot be quantified; and (4) identify or cross-reference the data or studies on which the agency bases the benefit and cost estimates.

Circular A-4 recommends specific methods for developing monetary and quantitative information about benefits and costs of regulations, as well as methods for evaluating nonmonetized benefits and costs. Monetizing is an important feature of benefit-cost analysis because it allows regulators to evaluate different regulatory options with a variety of attributes using a common measure. When a benefit or cost cannot be expressed in monetary units, OMB’s guidance encourages agencies to measure it quantitatively, in terms of its physical units. Monetizing or quantifying the benefits and costs of regulatory approaches may not be possible. In such cases, Circular A-4 encourages presentation of qualitative information on benefits and costs, including discussion of the strengths and limitations of the qualitative information.

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Source: OMB Circular A-4.

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## More Consistently Incorporating OMB Guidance Could Improve the Transparency and Rigor of Regulators' Analyses

As required by statute and internal policies, federal financial regulators conducted a variety of regulatory analyses as part of their Dodd-Frank Act rulemakings. We reviewed the regulators' rulemaking policies and procedures and found that they provided guidance consistent with their statutory requirements, such as PRA and RFA. In this regard, our findings are consistent with the recent findings of the Inspectors General of CFTC, the Federal Reserve Board, the Department of Treasury (for OCC), FDIC, and SEC.<sup>28</sup> At the request of 10 members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, these Inspectors General reviewed the economic analyses done by their agencies for several proposed Dodd-Frank Act rules. They found that the agencies largely followed the statutory and other requirements applicable to their rulemaking and related economic analysis.

Although most of the federal financial regulators told us that they tried to follow Circular A-4 in principle or spirit, their policies and procedures did not fully reflect OMB guidance on regulatory analysis. For example, FDIC, the Federal Reserve Board, OCC, and NCUA all have general policies that reflect the broad regulatory analysis principles associated with Circular A-4—such as determining the need for a regulation and examining alternative approaches. CFTC's and SEC's policies also include examples of benefit-cost analysis that reflect statutory requirements to consider certain types of benefits and costs.<sup>29</sup> However, the regulators' policies generally do not fully address the information challenges that regulators encounter as they draft regulations, as such challenges are addressed by Circular A-4. In general, the regulators'

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<sup>28</sup> See Office of Inspector General, Board of Governors of the Federal Reserve System, "Response to a Congressional Request Regarding the Economic Analysis Associated with Specified Rulemakings," (June 2011); Office of Inspector General, Federal Deposit Insurance Corporation, Evaluation of the FDIC's Economic Analysis of Three Rulemakings to Implement Provisions of the Dodd-Frank Act," Report No. EVAL-11-003 (June 2011); Office of Inspector General, Commodity Futures Trading Commission, "A Review of Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act," (June 13, 2011); Office of Inspector General, United States Securities and Exchange Commission, "Report of Review of Economic Analyses Performed by the Securities and Exchange Commission in Connection with Dodd-Frank Act Rulemakings," (June 13, 2011); Office of Inspector General, Department of Treasury, "Dodd-Frank Act: Congressional Request for Information Regarding Economic Analysis by OCC," OIG-CA-11-006 (June 13, 2011).

<sup>29</sup> The CFTC guidance was published on May 13, 2011, and thus did not apply to rulemakings within the scope of this review. The SEC guidance was last revised in 1999 and reflects OMB's "best practices" guidance issued in 1996.

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policies did not include the level of detail or instruction found in Circular A-4 for carrying out regulatory analyses. As noted, these regulators are not subject to the economic analysis requirements of E.O. 12866 or 13563 and, in turn, the OMB guidance. Importantly, the guidance serves as best practices for conducting regulatory analysis and, thus, provides an objective basis for identifying areas where the regulators could improve their policies and procedures as well as the quality of their regulatory analyses.

Federal financial regulators had limited or no discretion in connection with the majority of the Dodd-Frank Act rules that we reviewed. Twenty-one of the 32 final rules that were effective as of July 21, 2011, are mandatory—that is, the Dodd-Frank Act directed the agencies to adopt regulations containing substantive provisions specified by the statute. As a result, the agencies were provided with little or no discretion as to whether or how to implement these statutory provisions. For instance, the Dodd-Frank Act eliminated the prohibition against payment of interest on demand deposit accounts, requiring FDIC and the Federal Reserve Board to repeal certain regulations to reflect the statutory change. Eleven of the final rules provided the regulators with some level of discretion in implementation.<sup>30</sup> Three of the rules were identified by the regulators as “major” rules that could have a \$100 million or more annual impact on the economy and would thus, as significant regulatory actions, be subject to formal benefit-cost analysis under E.O. 12866 if the relevant agencies were required to follow it.<sup>31</sup> See appendix III for information about the 32 Dodd-Frank Act rules that were effective as July 21, 2011.

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<sup>30</sup> One SEC rule, *Beneficial Ownership Reporting Requirements and Security-Based Swaps*, 76 Fed. Reg. 34579 (June 14, 2010) was implemented at the discretion of SEC but was not included among the 10 rules in our regulatory analysis study. We omitted the rule from our study because SEC stated that it readopted existing rules without change in order to preserve the regulatory status quo while agency staff continues to develop proposals to modernize reporting requirements under Exchange Act section 13(d) and 13(g). We note that SEC conducted required regulatory analyses of the readopted rule.

<sup>31</sup> As defined by the Congressional Review Act, a major rule is a rule that the OIRA Administrator finds has resulted in or is likely to result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices, or (3) significant adverse effects on competition, employment, investment, productivity, or innovation. 5 U.S.C. § 804(2). This is similar, but not identical to, the definition of an economically significant rule under E.O. 12866.

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Through our review of the regulatory analyses conducted by federal financial regulators for their Dodd-Frank Act regulations, we found areas where such analyses could have been improved if the regulators had applied OMB's guidance more fully. We reviewed 10 of the final rules that allowed for some level of discretion on the part of the regulator.<sup>32</sup> Each of the 10 regulations included a discussion of the regulatory analyses the agencies performed to comply with RFA and PRA. For most of the regulations, the regulators concluded that the regulation would not have a "significant economic impact" on small businesses per RFA. For instance, some regulations covered a line of business (e.g., retail foreign exchange) in which no small entities were engaged. One RFA analysis identified cost savings for small businesses as a result of the rule. The regulators also identified the information collection requirements that their rules would impose on regulated entities, per PRA. For one PRA analysis the agency monetized the costs of providing required information and five other analyses quantified the hours needed to provide that information. In particular, two rules promulgated by SEC had information collection requirements that were essential to the rule. For those rules, SEC considered alternative requirements for regulated entities and provided reasons for choosing the alternative selected. For an OCC rule, a separate impact analysis was conducted to determine whether the rule would have an annual cost of \$100 million or more, in accordance with the Unfunded Mandates Reform Act and the Congressional Review Act. (See app. II for information about these statutory requirements.)

For each of the 10 regulations, we found that the regulators identified the problem that the regulation was intended to address and, in 6 cases, assessed the problem's significance. In addition, we found that the regulators used the statutory discretion allowed to examine reasonable alternatives. In many instances, they requested public comments on specific elements of the regulation and then examined alternative regulatory approaches in the context of responding to the comments. Most of the regulations also considered different compliance dates for enforcement to begin. For example, one agency found that its regulation

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<sup>32</sup> We compared the selected rules against a checklist we developed based on OMB Circular A-4, as an example of best practices, to determine the extent to which the agencies' assessed the impact of the rules on the economy. Several studies have used a similar approach to assess the quality of regulatory analyses being done by federal agencies. See, for example, Hahn, Robert W. and Patrick Dudley, How Well Does the Government Do Cost-Benefit Analysis?, AEI-Brookings Joint Center for Regulatory Studies, Working Paper 04-01 (April 2005).

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would impact municipalities and thus provided a transition period for compliance of over 3 years for municipal entities.

For 7 of the 10 regulations we reviewed, the agencies generally assessed benefits and costs of the alternative chosen. Specifically, SEC and CFTC analyzed the benefits and costs of their regulations and FDIC included discussions of benefits and costs in response to comments about specific elements of its regulations. As recommended by OMB's guidance, the analyses generally included:

- descriptions of the benefits and costs that accrue to U.S. citizens and residents,
- descriptions of the benefits and costs measured against a baseline,
- descriptions of the reasons for choosing among reasonable alternatives,
- descriptions of the benefits and costs that could not be monetized or quantified, and
- cross-references to data or studies on which the analysis was based.

While these aspects of the regulators' benefit-cost analyses were consistent with OMB's guidance, other aspects of the analyses were not. In particular, one of the seven benefit-cost analyses monetized the costs of the regulation, but the analysis did not monetize the benefits. None of the other analyses monetized either the benefits or costs, identified the type and timing of them, or expressed them in constant dollars. According to Circular A-4, monetizing allows regulators to evaluate different regulatory options using a common measure. When it is not possible to monetize a benefit or cost, OMB's guidance encourages agencies to measure it quantitatively, in terms of its physical units. Two of the seven benefit-cost analyses quantified the benefits and costs of the regulation that could not be monetized; the remaining five regulations that assessed benefits and costs did not attempt to quantify either the benefits or the costs. When it is not possible to measure benefits and costs monetarily or quantitatively, OMB guidance instructs agencies to present qualitative information on benefits and costs, including a discussion of the strengths and limitations of the qualitative information. However, none of the benefit-cost analyses of the federal financial regulators that we reviewed either explained why benefits and costs could not be monetized or quantified or discussed the strengths and limitations of the available qualitative information. In addition, only two of the seven benefit-cost analyses looked beyond direct benefits and costs and considered any important ancillary benefits, costs, and countervailing risks, as recommended by OMB guidance. Without monetized or quantified

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benefits and costs, or an understanding of the reasons they cannot be monetized or quantified, it is difficult for businesses and consumers to determine if the most cost-beneficial regulatory alternative was selected or to understand the limitations of the analysis performed. See appendix IV for more information about the regulatory analysis, including the benefit-cost analysis, of the 10 regulations that we reviewed.

Although federal financial regulators said that they followed OMB's guidance in spirit or principle, we found areas where regulators could have improved their regulatory analyses by applying OMB's guidance more fully. As a result, regulators may be missing an opportunity to enhance the rigor and improve the transparency of their analyses. The current administration has made efforts to encourage federal financial regulatory agencies to conduct more rigorous analysis of financial regulations. For instance, in July 2011, the President signed E.O. 13579 to encourage independent regulatory agencies to comply with E.O. 13563 (which supplements E.O. 12866) and enhance the rigor and transparency of their analyses. In addition, in its 2011 annual report to Congress, OMB emphasized that better information on the benefits and costs of the rules issued by independent regulatory agencies would help in informing the public and obtaining a full accounting of the rules' benefits and costs. OMB reported that the absence of such information was a continued obstacle to transparency and might have adverse effects on public policy.

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**Stakeholders Cited Weaknesses in Past and Current Regulatory Analyses but also Recognized the Challenges These Analyses Presented**

Academics, policy analysts, and stakeholders from industry groups have noted a number of concerns with regulatory analyses of the regulations issued pursuant to the Dodd-Frank Act. For example, representatives from industry and consumer associations said that the regulatory analyses done to date for the proposed and finalized Dodd-Frank Act regulations generally focused on measuring the costs associated with data collection and did not provide information on the possible impact of regulations on the behavior of businesses and consumers. While they were critical of the analyses conducted, the representatives also recognized that the regulators faced challenges in producing meaningful regulatory analyses, in part because of tight time frames for issuing regulations and the lack of available data.

Further, some academics and policy analysts have argued that benefit-cost analyses of financial regulations have not been as rigorous as those done for other regulations. Specifically, a review of financial regulations by one analyst led him to conclude that "the nation's financial regulators ha[d] largely failed to perform the rigorous analysis required of most other

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government agencies, especially those in the fields of health, safety, and environmental regulation.”<sup>33</sup> Other policy analysts concluded that regulatory analyses by independent regulatory agencies, including some federal financial regulators “generally do not analyze economic effects in a manner intended to meet any identifiable standards for such analysis.”<sup>34</sup> However, an academic with whom we spoke stated that additional cost-benefit analysis requirements will provide only a marginal increase in value; instead, according to the academic, the goal should be to accomplish regulatory objectives at minimum cost. As we have reported, the difficulty of reliably estimating the costs of regulations to the financial services industry and the nation has long been recognized, and the benefits of regulation generally are regarded as even more difficult to measure.<sup>35</sup> This situation presents challenges for regulators attempting to estimate the anticipated costs of regulations and also for industries seeking to substantiate claims about regulatory burdens. For example, while compliance costs of financial regulations can usually be estimated and measured, the economic costs of transactions foregone as the result of regulation can be more difficult to anticipate and measure.

Other entities have also identified shortcomings in some of the regulators’ benefit-cost analyses. For example, the United States Court of Appeals for the District of Columbia Circuit determined that SEC failed to adequately assess the economic aspects of a regulation.<sup>36</sup> In addition, in the spring of 2011, the CFTC Inspector General found that for four rules it examined, CFTC generally adopted a “one size fits all” approach without giving significant regard to the deliberations addressing idiosyncratic cost and benefit issues that were shaping each rule.<sup>37</sup> CFTC has since revised

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<sup>33</sup> Edwin Sherwin, “The Cost-Benefit Analysis of Financial Regulation: Lessons from the SEC’s Stalled Mutual Fund Reform Effort,” *Stanford Journal of Law, Business, & Finance*, Vol. 12:1, Fall, 2006, 2.

<sup>34</sup> Arthur Fraas and Randall Lutter, “On the Economic Analysis of Regulations at Independent Regulatory Commissions: Would Greater Use of Economic Analysis Improve Regulatory Policy at Independent Regulatory Commissions?”, *Resources for the Future*, RFF DP 11-16, April 2011.

<sup>35</sup> See [GAO-08-32](#).

<sup>36</sup> See *Business Roundtable v. SEC*, 647 F. 3d 1144 (D.C. Cir. 2011).

<sup>37</sup> Office of Inspector General, U.S. Commodity Futures Trading Commission, “An Investigation Regarding Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act” (Apr. 15, 2011).

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its staff guidance on cost-benefit considerations for Dodd-Frank Act rulemakings and provided guidance to address the recommendations of the Inspector General.

Finally, many federal financial regulators told us that it could be challenging to obtain the best economic information available to conduct their regulatory analyses in a timely manner. For example, a regulator stated that much of the information is held by regulated entities and considered proprietary, and neither the regulators nor the regulated entities want the information made public during the public rulemaking process. Also, some regulators note that PRA limits their ability to request information outside of the public rulemaking process from ten or more entities at a time unless OMB does an extensive review of and approves the request.<sup>38</sup> Furthermore, given the time constraints for performing regulatory analysis for Dodd-Frank Act regulations, a regulator said that the time required to complete an OMB review could preclude them from being able to pursue information outside the rulemaking process.

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## Federal Financial Regulators Have Informally Coordinated Their Rulemaking Efforts but Generally Lack Policies to Guide These Efforts

The Dodd-Frank Act requires or authorizes the federal financial regulators to promulgate hundreds of rulemakings. Some of these rules will be issued jointly by multiple agencies and thus require interagency coordination. Other rules will be issued separately by regulators but, in some cases, cover similar subject matter, creating the potential for overlap or duplication. For instance, authority for developing and adopting regulations to implement Section 619, also known as the Volcker Rule, is divided among the CFTC, FDIC, the Federal Reserve Board, OCC, and SEC.<sup>39</sup> While the Dodd-Frank Act does not require all of the regulators to issue a joint rulemaking on the Volcker Rule, it does require that the regulators consult and coordinate with each other, in part to ensure that their regulations are comparable. In general, coordination among federal agencies takes place when two or more agencies engage in joint activities in an effort to reduce duplication or overlap in programs and

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<sup>38</sup> This requirement is statutory and not unique to federal financial regulatory agencies. OMB views this requirement as essential to ensuring the maximum utilization of the information being requested by the agency.

<sup>39</sup> Section 619 (the Volcker Rule) prohibits banking entities, which benefit from federal insurance on customer deposits or access to the discount window, from engaging in proprietary trading or investing in or sponsoring hedge funds or private equity funds, subject to certain exceptions.

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regulations. Such efforts may not only ease the burden of compliance on industry but also reduce market participants' uncertainty about the future functioning of financial markets. Joint activities can range from required interagency meetings during a joint rulemaking to voluntary informal discussions among colleagues across different agencies engaged in similar efforts. In sum, effective coordination could help agencies minimize or eliminate staff and industry burden, administrative costs, conflicting regulations, unintended consequences, and uncertainty among consumers and markets.

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### Although the Dodd-Frank Act Requires Coordination, the Extent and Nature of Coordination Varies across Regulators and Rules

The Dodd-Frank Act includes a number of both agency-specific and rule-specific coordination and consultation requirements.<sup>40</sup> For example, it imposes specific interagency coordination and consultation requirements and responsibilities for the Financial Stability Oversight Council (FSOC) and CFPB.

- Title I of the Dodd-Frank Act creates FSOC to, among other things, identify potential threats to the financial stability of the United States and make recommendations to primary functionary regulatory agencies to apply certain supervisory standards.<sup>41</sup> Title I imposes a broad responsibility on FSOC to facilitate interagency coordination by facilitating information sharing and coordination among its member agencies and other federal and state agencies on the development of financial services policy, rulemaking, examinations, reporting requirements, and enforcement actions.<sup>42</sup>
- Title X of the Dodd-Frank Act requires CFPB to consult with the appropriate prudential regulators or other federal agencies, both before proposing a rule and during the comment process, regarding consistency with prudential, market, or systemic objectives administered by such agencies. CFPB must also publish any written

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<sup>40</sup> The act does not expressly define the terms "consult" or "coordinate." For the purposes of our report, we use the terms interchangeably.

<sup>41</sup> Title I is also known as the Financial Stability Act of 2010. FSOC consists of 10 voting members and 5 nonvoting members and brings together the expertise of federal financial regulators, state regulators, and an insurance expert appointed by the President. Its voting members include the Secretary of the Treasury, who is the chairman of FSOC, and the heads of the Federal Reserve Board, OCC, CFPB, SEC, FDIC, CFTC, and NCUA.

<sup>42</sup> 12 U.S.C. § 5322(a)(2)(E).

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objections to a proposed rule by a prudential regulator when the rule is adopted, along with an explanation of its decision to accept or reject the objection.<sup>43</sup> In addition, FSOC can set aside a final regulation prescribed by CFPB with a two-thirds vote if it decides that the regulation or provision would put the safety and soundness of the banking system or the stability of the financial system at risk. While not a specific coordination requirement, this requirement will also serve to encourage CFPB to coordinate its rulemaking with other regulators.

The Dodd-Frank Act does not subject any of the other federal financial regulators to similar overarching coordination requirements, but it does impose rule-specific coordination or consultation requirements. For example, it requires regulators to engage in a number of joint rulemakings, implicitly requiring them to coordinate with each other. It also includes provisions that explicitly require the regulators to coordinate or consult with each other when promulgating a specific rule or related rules dealing with a particular subject matter. Examples of such coordination and consultation requirements rules include the following:

- Title I includes a number of consultation or coordination requirements. For example, FSOC is required to consult with the primary financial regulatory agency, if any, before designating a nonbank financial company as systemically important. FSOC must also consult with relevant members before imposing prudential standards or other requirements that are likely to have a “significant impact” on a functionally regulated subsidiary or depository institution subsidiary of a systemically important company.<sup>44</sup> Before imposing prudential standards or other requirements likely to have a significant impact on a subsidiary of a non-bank financial company or of certain bank holding companies supervised by the Federal Reserve Board, the Federal Reserve Board must consult with each FSOC member that primarily supervises any such subsidiary with respect to such standards or requirements. Finally, the Federal Reserve Board also is required to consult with FSOC and FDIC on setting requirements to provide for early remediation of financial distress of a nonbank

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<sup>43</sup> 12 U.S.C. § 5512(b)(2)(C).

<sup>44</sup> For information on systemically important firms, see Sections 804 and 805 of the Dodd-Frank Act.

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financial company that it supervises or a bank holding company with total consolidated assets equal to or greater than \$50 billion.

- Title II of the Dodd-Frank Act requires FDIC, in consultation with FSOC, to adopt such rules it deems necessary or appropriate to implement the orderly liquidation authority process.<sup>45</sup>
- Title VII of the Dodd-Frank Act creates a regulatory regime for the over-the-counter swaps markets. Under this title, SEC and CFTC are required to coordinate and consult with each other and any relevant prudential regulators before commencing rulemaking on swaps or swap-related subjects, for the express purpose of assuring regulatory consistency and comparability across the rules or orders.<sup>46</sup>
- Title VIII of the Dodd-Frank Act includes a requirement that CFTC and SEC coordinate with FSOC and the Federal Reserve Board for any regulations they decide to issue regarding risk management supervision programs for designated clearing entities.

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<sup>45</sup> The orderly liquidation authority given to FDIC in the Dodd-Frank Act creates a process by which FDIC may serve as a receiver for large, interconnected financial companies whose failure may pose a risk to the financial stability of the United States. For further information, see Sections 201 through 217 of the Dodd-Frank Act.

<sup>46</sup> For further information, see Sections 711 through 774 of the Dodd-Frank Act.

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## Regulators Coordinated Some of the Final Rules but Generally Lack Policies and Procedures to Guide Coordination Efforts

Of the 18 final rules that we reviewed to assess interagency coordination, federal regulators told us that they coordinated with other regulators on 9 of the rulemakings.<sup>47</sup> Two of the rules required interagency coordination under the Dodd-Frank Act, but none of the other 16 rules were joint rules or specifically required interagency coordination.<sup>48</sup> Regulators told us that the importance of coordination was established early on by their senior leadership, who met shortly after the passage of the Dodd-Frank Act to identify and discuss areas in which interagency coordination could be useful and establish interagency working groups or points of contacts where necessary. For the two rules that required interagency coordination, SEC staff told us that they met with staff from other agencies and provided them with rule-related materials for their review and comment. The staff said that they did not receive any substantive comments and noted that the rules did not potentially duplicate or conflict with any of the other agencies' rules. While regulators were not required to coordinate on any of the other 16 rules that we reviewed—for example, because the rules were administrative or fell within the exclusive purview of a single regulator—they chose to coordinate or consult with other regulators on seven rules for a variety of reasons. For instance, Section 343 of the Dodd-Frank Act amended the Federal Deposit Insurance Act to provide unlimited deposit insurance for “noninterest-bearing transaction accounts” for a 2-year period. Before issuing its rule to adopt this requirement, FDIC staff told us they had held informal discussions with Federal Reserve Board staff about whether certain types of payments to depositors qualified as interest. FDIC staff told us that no other consultation took place, given that the scope of the proposed rule was minimal. For rules that raised some concerns about duplication or conflict, however, coordination was broader in scope. For example, CFTC, FDIC, and OCC issued separate rules to regulate off-exchange foreign

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<sup>47</sup> The 18 final rules were selected based on whether they required interagency coordination or could have benefited, in our judgment, from any interagency coordination. To make this determination, we looked for regulations involving issues or subject matters that were overseen by multiple federal financial regulators. There also were three notices and one list that had coordination or consultation requirements under the Dodd-Frank Act but were not reviewed under this objective because they were not regulations.

<sup>48</sup> The two rules requiring agency coordination were issued by SEC. See *Rules of Practice*, 76 Fed. Reg. 4066 (Jan. 24, 2011), which formalizes the process SEC will use when conducting proceedings to determine whether a self-regulatory organization's proposed rule change should be disapproved, and *Beneficial Ownership Reporting Requirements and Security-Based Swaps*, 76 Fed. Reg. 34579 (June 14, 2011), which readopts without change portions of SEC's existing beneficial ownership rules.

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exchange transactions that their regulated entities entered into with retail customers. OCC staff told us that the regulators—including CFTC, Federal Reserve Board, FDIC, NCUA, and SEC—had voluntarily consulted one another before issuing the rule.

In discussing the ways in which they had coordinated with other regulators on rulemakings to date, regulators generally described informal processes. For example, to help facilitate coordination, a number of the regulators said that they had identified points of contact at other regulators for specific rules. They used those points of contact to solicit comments on draft proposed rules or obtain other information and data through e-mail or phone calls. Similarly, CFPB staff also said that they had informally consulted with other regulators on rulemaking through conference calls and by sharing portions of draft rules for review.

Although federal financial regulators informally coordinated with each other on some of the final rules that we reviewed, most of the regulators lacked written policies and procedures to facilitate interagency coordination. Specifically, seven of nine regulators included in our review did not have written policies and procedures to facilitate coordination on rulemaking. For example, CFPB is in the process of developing policies and procedures for coordination on rulemaking, including how to resolve jurisdictional or other disagreements in rulemaking. As noted earlier, CFPB is required to consult with the appropriate prudential regulators or other federal agencies both before proposing a rule and during the comment process. According to CFPB officials, the Bureau is considering various coordination issues and working to establish policies or procedures to facilitate coordination. CFPB officials noted that they were still setting up CFPB and that many decisions, including how CFPB would coordinate with other regulators, remained to be determined. The officials also said that CFPB was committed to fulfilling the coordination requirements set for it in the Dodd-Frank Act.

Moreover, the written policies and procedures that do exist are limited in their scope or applicability. FDIC and OCC are the only two of the nine regulators that have rulemaking policies that include guidance on developing interagency rules. For example, FDIC's policy manual for developing rules includes a section on developing an interagency rule or statement of policy that describes the roles and responsibilities of the agencies in the process. Similarly, OCC's rulemaking procedures manual includes guidance on interagency rulemakings and outlines, among other things, how staff will be designated to represent OCC in such rulemakings and the responsibilities of the designated staff. However, neither FDIC's

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nor OCC's policies describe the process for soliciting and addressing other regulators' comments, including conflicting views. Other regulators have procedures in place that could facilitate coordination, but these procedures are also limited. For instance, FSOC has developed a consultation framework that provides timeframes for holding initial meetings to discuss potential approaches to regulation and circulating term sheets and proposals to enact the regulation. However, the framework applies only to rules for which consultation with FSOC is required. Additionally, SEC and CFTC have a memorandum of understanding that establishes a permanent regulatory liaison between them and contains procedures to facilitate the discussion and coordination of regulatory action on issues of common regulatory interest, such as novel derivative products.<sup>49</sup> Such regulatory actions can include investigations, examinations, and individual rulemakings.

Documented policies can help ensure that adequate coordination takes place and help to improve interagency relationships, prevent the duplication of efforts at a time when resources are extremely limited, and avoid the potential for disruptions across financial markets caused by regulatory uncertainty. In prior work, we have identified the establishment of compatible policies and procedures to allow for efficiency of operations across agency boundaries as a best practice for sustaining and enhancing collaborative efforts across federal regulatory agencies.<sup>50</sup> As we have previously reported, the lack of compatible standards, policies, and procedures can hinder collaboration. Given the breadth and scope of the Dodd-Frank Act rulemakings, having documented policies and procedures for interagency coordination is especially important to avoid conflicting or duplicative rules.

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### The Nature of FSOC's Involvement in the Rulemaking Process Has Been Evolving

While FSOC continues to evolve and define its role, FSOC staff noted that its organizational structure helps ensure coordination among its member agencies. First, because FSOC is made up of all the federal financial regulators and other entities, and the regulators are all voting members, it is an interagency body by definition and takes actions on that

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<sup>49</sup> An example of a novel derivative product is a futures contract based on shares of the SPDR® Gold Trust, an exchange-traded fund.

<sup>50</sup> GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

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basis. Second, FSOC staff told us that the council has established committees and subcommittees to help carry out its responsibilities and authorities, further promoting interagency coordination.<sup>51</sup> These groups are comprised of staff from FSOC member agencies and can facilitate informal coordination outside of FSOC's explicit coordination requirements. For example, the Systemic Risk Committee identified mortgage servicing as a key issue that had interagency implications and was able to get staff from the relevant agencies to work together to prioritize this as a recommended area for regulatory action in the annual report, according to FSOC staff. Third, as FSOC Chairperson, the Secretary of the Treasury can also promote coordination among member agencies. In its 2010 annual report, FSOC noted that its chairperson was playing an active role in coordinating the agencies' work to draft consistent and comparable regulations to implement the proprietary trading and the joint risk retention rules, as required under the Dodd-Frank Act.

In addition to its organizational structure, FSOC also has developed tools to facilitate formal coordination and promote informal coordination among its members. For example, FSOC has developed a consultation framework for the rulemakings for which consultation with FSOC is required. The framework establishes time frames for coordinating three key tasks in these rulemakings: initial interagency meetings, circulation of term sheets for interagency comments, and circulation of proposed rules for interagency comments. In addition, in October 2010 FSOC issued an integrated implementation roadmap for the Dodd-Frank Act that included a comprehensive list of the rules regulators were required to promulgate, provided a timeline for those rulemakings, and identified the agencies responsible for each rulemaking.

Although these tools are a positive development in facilitating coordination, they have limited usefulness. For example, although the FSOC consultation framework specifies the time frames for completing major milestones in rulemakings for which consultation with FSOC is required, it does not provide any specifics about staff responsibilities or

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<sup>51</sup> FSOC has several committees: (1) a Deputies Committee comprised of senior staff from member agencies that is responsible for overseeing the work of the other committees; (2) a Systemic Risk Committee, with two subcommittees, that provides structure for FSOC's analysis of emerging threats to financial stability; and (3) five functional committees that support FSOC's work on specific provisions assigned to it.

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the processes to be used to facilitate coordination, and FSOC staff told us the framework is not intended to do so. It also applies only to coordination between FSOC and member agencies. Also, the roadmap does not discuss coordination among member agencies. For example, the extent to which interagency coordination is required or what happens when rulemakings conflict with or duplicate each other is not mentioned. Representatives from industry associations told us that FSOC's coordination efforts in their view generally had not been useful and should be strengthened. For example, according to industry representatives, FSOC has not used its position to help agencies sequence the rules in a logical order to give industry the ability to comment on the rules in a meaningful way.

Another coordination body in the federal financial arena is the Federal Financial Institutions Examination Council (FFIEC). FFIEC, established through statute in 1978, is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Federal Reserve Board, FDIC, NCUA, OCC, and the State Liaison Committee, and to make recommendations to promote uniformity in the supervision of these financial institutions.<sup>52</sup> The Dodd-Frank Act does not require FFIEC to play a coordinating or consultative role in any of the act's rulemaking efforts. However, FFIEC has remained abreast of its member agencies' activities relative to the Dodd-Frank Act through ongoing discussions and interagency coordination of proposed rulemakings required by the act.

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<sup>52</sup> The Federal Financial Institutions Examination Council (FFIEC) was established in 1979, pursuant to Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978. The Dodd-Frank Act eliminated OTS, which was also part of FFIEC, and transferred its authority to the OCC, FDIC, and Federal Reserve Board. Furthermore, in accordance with the Dodd-Frank Act, the Director of the CFPB will join the membership of the Council. The State Liaison Committee is a voting member of FFIEC and includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors. FFIEC is supported by a small administrative staff in its operations office and examiner program. All other staff are pulled from its member financial regulators.

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## It Is Too Early to Determine the Impact of Dodd-Frank Act Regulations, but Opportunities for Future Analyses Exist

Federal financial regulators, industry association representatives, and others told us that assessing the actual impact of the Dodd-Frank Act regulations generally is premature for a number of reasons, including the following:

- Industry representatives and regulators noted that sufficient time has not elapsed to allow for many of the Dodd-Frank Act rules to be fully implemented and, in turn, assessed. Indeed, nearly half of the final Dodd-Frank Act rules that were effective as of July 21, 2011, did not take effect until after July 1, 2011, and will require time to implement. For example, OCC and FDIC separately issued rules to allow banks to engage in foreign-exchange transactions with retail customers that became effective on July 15, 2011. Before engaging in such transactions under the new rules, banks must take a number of actions, such as obtaining permission from their regulators, modifying systems to meet new disclosure and recordkeeping requirements, and establishing and implementing internal rules, procedures, and controls to comply with new trading and operational standards. Referring to the yet-to-be-issued derivatives rules, representatives from a derivatives association and a coalition of various national and state organizations told us that it would take firms a significant amount of time, perhaps years, to set up the infrastructure and develop the systems and models needed to comply with those rules. Additionally, officials from the Federal Reserve Board and two labor unions told us that the impact and associated benefits and costs of the Dodd-Frank Act rules could not be determined until the economy has gone through at least one business cycle.
- Representatives from a banking association told us that the majority of final rules that were effective as of July 21, 2011, were not expected to have a significant effect—both because of their scope and the relatively small number of them. For example, some of the Dodd-Frank Act rulemakings to date are orders, notices, or similar actions rather than regulations that directly impact regulated institutions and the markets. Industry representatives said that many of the final rules that were in effect as of July 2011 are likely to have minimal impact, but that some of the forthcoming rules would have a significant impact, such as those involving mortgages, derivatives trading and clearing, and consumer financial protection. In addition, representatives from another banking association said that banks are just beginning to understand the rules and that only a fraction of the rules have been finalized. Moreover, Federal Reserve Board officials said that estimating the cumulative impact of the Dodd-Frank Act rules

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was not yet possible because few of the act's provisions had taken effect.

- Some of the final rules are related to rules that are forthcoming; as a result, the impact of these rules needs to be assessed in combination, not in isolation. Regulators have not drafted and issued the rules in an appropriate sequence, in part because of statutory deadlines, creating a situation in which one rule will be affected by another rule that has not yet been proposed. For example, the Federal Reserve Board issued a rule to establish the period within which financial institutions would need to bring their activities and investments into compliance with the Volcker Rule. Authority for developing and adopting regulations to implement the Volcker Rule is divided among the Federal Reserve Board, OCC, FDIC, SEC, and CFTC, but these agencies had not yet proposed such rules as of July 21, 2011. In addition, federal financial regulators are drafting and implementing Basel III and other non-Dodd-Frank Act rules that could have related economic effects on regulated entities.

Likely reflecting the early stages of the implementation of the Dodd-Frank Act, our search of several economic journal databases did not identify any retrospective studies that analyzed the economic impact of the Dodd-Frank Act regulations. Some studies that we reviewed prospectively analyzed the potential costs of various aspects of the Dodd-Frank Act but did not seek to quantify the potential benefits. For example, the Congressional Budget Office estimated that the act would increase the federal government's revenues and direct (or mandatory) spending by \$13.4 billion and \$10.2 billion, respectively, over the 2010 through 2020 period, and those effects were projected to reduce deficits, on net, by \$3.2 billion.<sup>53</sup> Other studies that we reviewed analyzed how effectively the act, and the regulations implemented under it, might address the causes of the recent financial crisis and, in turn, reduce the likelihood of or mitigate future financial crises; but these potential impacts were not

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<sup>53</sup> Douglas W. Elmendorf, Director of the Congressional Budget Office, Review of CBO's Cost Estimate for the Dodd-Frank Wall Street Reform and Consumer Protection Act, before the Subcommittee on Oversight and Investigations Committee on Financial Services, House of Representatives (Mar. 30, 2011).

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quantified.<sup>54</sup> In our future reviews, we will continue to search for and review relevant research on the benefits and costs of Dodd-Frank Act regulations.

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### Regulators Have Not Yet Developed Plans for Retrospective Reviews of Dodd-Frank Act Regulations

Federal financial regulators are required to conduct retrospective reviews of their existing rules under various statutes and will include Dodd-Frank Act rules in their future reviews. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires FFIEC and its members (FDIC, the Federal Reserve Board, OCC, NCUA, and formerly OTS) to review all existing regulations every 10 years and eliminate (or recommend statutory changes that are needed to eliminate) any regulatory requirements that are outdated, unnecessary, or unduly burdensome.<sup>55</sup> In July 2007, FFIEC reported the results of its members' most recent EGRPRA review, which was done over a 3-year period ending in December 2006.<sup>56</sup> In conducting their review, the federal banking regulators sought public comment on more than 130 regulations and hosted 16 outreach sessions around the country. During the EGRPRA process, the federal banking agencies undertook various efforts to reduce regulatory burden on institutions that they supervised and regulated—including regulatory changes and efforts to streamline supervisory processes. They also identified four areas to explore further for opportunities to revise regulations—suspicious activity reports, lending limits, the Basel II capital framework, and consumer disclosures.

In addition to EGRPRA, Section 610 of RFA requires independent and other regulatory agencies to review within 10 years of publication any of their rules that have a significant economic impact on a substantial number of small entities.<sup>57</sup> The review's purpose is to determine whether

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<sup>54</sup> See, for example, Viral V. Acharya, Thomas Cooley, Matthew Richardson, Richard Sylla, and Ingo Walter, "The Dodd-Frank Wall Street Reform and Consumer Protection Act: Accomplishments and Limitations," *Journal of Applied Corporate Finance*, Vol. 23, No. 1 (2011); and Peter J. Wallison, *The Error at the Heart of the Dodd-Frank Act*, American Enterprise Institute for Public Policy Research, *Financial Services Outlook*, August-September 2011.

<sup>55</sup> Pub. L. No. 104-208, § 2222, 110 Stat. 3009, 3009-414 to 3009-415 (1996) (codified at 12 U.S.C. § 3311).

<sup>56</sup> FFIEC, *Joint Report to Congress July 31, 2007; Economic Growth and Regulatory Paperwork Reduction Act; Notice*, 72 Fed. Reg., 62036 (Nov. 1, 2007).

<sup>57</sup> Pub. L. No. 96-354, § 610, 94 Stat. 1164, 1169 (1980) (codified at 5 U.S.C. § 610).

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such rules should be maintained, amended, or rescinded to minimize their impact on small entities.<sup>58</sup> Federal banking regulators have conducted separate Section 610 reviews and, as discussed earlier, included such reviews within their broader retrospective reviews done pursuant to EGRPRA. Similarly, SEC has conducted Section 610 reviews. As a matter of policy, SEC reviews all final rules that it publishes for notice and comment to assess their utility and continued compliance with RFA.

Although subject to the RFA's Section 610 requirement, CFPB is also subject to its own retrospective review requirement. Specifically, Section 1022(d) of the Consumer Financial Protection Act of 2010 requires CFPB to assess each of its significant rules to address, among other things, the effectiveness of the rule in meeting the purposes and goals of the act and specific agency goals.<sup>59</sup> CFPB officials told us that they were considering how to conduct their retrospective reviews and were looking at FFIEC's retrospective reviews as guidance.

Federal financial regulators also may review their Dodd-Frank Act regulations in response to the recently issued E.O. 13579. The order notes that independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome. It further notes that each agency should develop and release to the public a plan for periodically reviewing its existing significant regulations. Although federal financial regulators are not required to follow E.O. 13579, CFTC and SEC are developing plans to conduct retrospective reviews in light of the order. In a June 2011 Federal Register release, CFTC noted that it had reviewed many of its existing regulations as part of its implementation of the Dodd-Frank Act.<sup>60</sup>

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<sup>58</sup> Section 610 reviews must address the (1) continued need for the rule; (2) nature of public complaints or comments received concerning the rule from the public; (3) rule's complexity; (4) extent to which the rule overlaps, duplicates or conflicts with other rules, and, to the extent feasible, with state and local rules; and (5) length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

<sup>59</sup> In their study on consumer financial protection, Campbell et al. note that CFPB should follow a disciplined process when considering new financial regulations, including evaluating both potential and existing regulations to determine whether regulatory interventions actually deliver the desired improvements in the metrics for success. See Campbell, John Y., Howell E. Jackson, Brigitte C. Madrian, and Peter Tufano, Consumer Financial Protection, *Journal of Economic Perspectives*, Vol. 25, No. 1 (2011).

<sup>60</sup> 76 Fed. Reg. 38328 (June 30, 2011).

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After issuing its final Dodd-Frank Act rules, CFTC plans to conduct retrospective reviews of the remainder of its regulations. CFTC asked for public comments on, among other things, what criteria it should use to prioritize the review of existing rules and which of the executive order's guidelines and principles it should voluntarily adopt. As part of its ongoing efforts to update its regulations and in light of E.O. 13579, SEC issued a release in September 2011, requesting public comments on the development of a plan for retrospective review of its existing significant rules.<sup>61</sup> Specifically, SEC asked what factors it should consider in selecting and prioritizing rules for review and how frequently it should conduct the reviews. SEC also included questions on the availability of data it would need and processes for gathering relevant data and analyses.

Although federal financial regulators told us that they planned to conduct retrospective reviews of their Dodd-Frank Act regulations in response to statutory requirements or at their own discretion, some of the regulators we reviewed have not developed plans for such reviews.<sup>62</sup> In our prior work, we identified procedures and practices that could be particularly helpful in improving the effectiveness of retrospective reviews.<sup>63</sup> In particular, we noted that agencies would be better prepared to undertake reviews if they had identified the needed data before beginning a review and, even better, before promulgating the rule. If agencies fail to plan for how they will measure the performance of their rules and how they will obtain the data they need to do so, they may be limited in their ability to accurately measure the progress or true effect of the regulations. For example, by not engaging in advance planning, an agency may realize too late that it lacks the necessary baseline data to assess regulations promulgated years before. By planning ahead, such as what SEC appears to be doing in its retrospective review release, an agency can identify not only potential data collection challenges but also alternative data sources or data collection strategies for conducting the reviews.

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<sup>61</sup> 76 Fed. Reg. 56128 (Sept. 12, 2011).

<sup>62</sup> Federal financial regulators may review and have reviewed their rules based on their own discretion. For example, regulators have reviewed rules in response to discussions with industry or based on an internal policy.

<sup>63</sup> See GAO, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007).

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## FSOC Is Working to Meet Its Multiple Reporting Requirements but Has Not Yet Taken Steps to Assess the Impact of Dodd-Frank Act Rules

FSOC has conducted analyses to assess the impact of various provisions and regulations of the Dodd-Frank Act. The act identifies specific areas for FSOC to study (including making recommendations) to help inform rulemaking. These areas include the financial sector concentration limit applicable to large financial firms, proprietary trading and hedge fund activities of banks, and contingent capital for nonbank financial companies.<sup>64</sup> Issued in January 2011, the concentration limit study concluded that the limit was unlikely to have a significant effect on the cost and availability of credit but did not quantify the impact.<sup>65</sup> Also in January 2011, the Chairperson of FSOC issued a study on the economic impact of possible financial services regulatory limitations intended to reduce systemic risk.<sup>66</sup> The study was based largely on existing research and noted that the Dodd-Frank Act undoubtedly had a significant effect but that it was too soon to attempt to quantify its aggregate impact or the specific impact of various provisions. The Chairperson of FSOC is required to conduct a follow-up study every 5 years and recommended that the next study consider the experience of implementing the Dodd-Frank Act and any further original research.

FSOC also issued its first annual report in July 2011. The Dodd-Frank Act requires FSOC to issue an annual report that addresses, among other things, (1) significant financial market and regulatory developments; (2) potential emerging threats to the financial stability of the United States; and (3) recommendations to enhance the integrity, efficiency, competitiveness, and stability of U.S. financial markets, promote market discipline, and maintain investor confidence. The 2010 annual report included information and analyses on the U.S. economy and financial system, implementation of the Dodd-Frank Act, and emerging threats to

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<sup>64</sup> Section 622 of the Dodd-Frank Act establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction. This concentration limit is intended, along with a number of other provisions in the Dodd-Frank Act, to promote financial stability and address the perception that large financial institutions are too big to fail.

<sup>65</sup> FSOC, Study and Recommendations regarding Concentration Limits on Large Financial Companies Completed Pursuant to Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (January 2011).

<sup>66</sup> FSOC, Study of the Effects of Size and Complexity of Financial Institutions on Capital Market Efficiency and Economic Growth Pursuant to Section 123 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (January 2011).

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the U.S. financial stability. Consistent with its mandate, FSOC made a series of recommendations to its member agencies and market participants. FSOC recommended heightened risk management and supervisory attention in specific areas, further reforms to address structural vulnerabilities in key markets, steps to address reform of the housing finance market, and coordination on financial regulatory reform. According to FSOC, its recommendations collectively addressed the identified vulnerabilities in the system and emerging threats to financial stability.

In light of its statutory requirements, FSOC plans to assess the future impact of significant Dodd-Frank regulations, including those that may not have systemic risk implications. According to FSOC staff, FSOC would not be able to make recommendations—for instance, to improve the integrity, efficiency, competitiveness, and stability of the U.S. financial markets—without considering the impact of the act and its regulations. However, they also noted that was too early for such a review because most of the Dodd-Frank Act rules were not in effect. FSOC staff also said that the council was actively tracking efficiency and competitiveness-related issues and, in conjunction with the Office of Financial Research, developing its research capabilities.<sup>67</sup> According to FSOC staff, FSOC has not directed the Office of Financial Research to begin identifying and collecting the data that will be needed to help FSOC assess the Dodd-Frank Act rules. Rather, at this early stage the Office of Financial Research is focused on ramping up its capabilities with the support of FSOC members. FSOC staff said that they expect the Office of Financial Research to provide more data and analytical support to FSOC in the future.

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## GAO Is Developing a Framework for Future Impact Analyses

In response to our mandate to analyze the impact of regulations on the financial marketplace, we have begun to construct an analytical framework for doing so when practicable. In developing our framework, we have consulted with regulators, academics, industry associations, and others. These parties recognized the importance of assessing the impact

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<sup>67</sup> The Dodd-Frank Act established the Office of Financial Research within the Treasury Department to improve the quality of financial data available to policymakers and facilitate more robust and sophisticated analysis of the financial system. To help with the identification of emerging risks to financial stability, FSOC can provide direction to and request data and analyses from the office.

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of the Dodd-Frank Act rules or provided us with suggestions on which rules to review and approaches for analyzing such rules. At the same time, many stated that analyzing the impact of the Dodd-Frank Act rules, individually or cumulatively, would be challenging because of the multitude of intervening variables, the complexity of the financial system, data limitations, and the changing economic conditions. One academic has also noted that measuring the costs of financial regulation is challenging in part because the private costs of regulation are difficult to obtain and that measuring the benefits is a more difficult and perhaps intractable challenge.<sup>68</sup> Likewise, we also have reported that measuring the benefits and, to a lesser extent, the cost of financial services regulations historically has posed a number of difficulties and challenges.<sup>69</sup>

Given the challenging task at hand, we plan to continue to seek input from the financial regulators, the industry, and others as we move forward in developing our methodology for assessing the impact of Dodd-Frank Act regulations. As part of our framework, we plan to continue to track rules promulgated pursuant to the Dodd-Frank Act and develop methods to conduct preliminary analyses of their potential impact and benefits and costs. For example, we plan to review the benefit-cost analysis, if any, conducted for each rule by the relevant agency. To the extent feasible, we plan to analyze not only the specific impact of selected rules but also the overall impact of the Dodd-Frank Act, using quantitative methods wherever possible. However, it will be difficult to quantify all of the potential impacts, especially those that are expected to materialize over a longer period of time or that require the forecasting of indirect causal relationships. As a result we plan to augment any quantitative analysis we conduct with qualitative assessments to provide information in these areas. We also plan to monitor and report on relevant macroeconomic indicators, some of which will be directly related to the variables enumerated in our mandate. To that end, we are developing criteria for selecting rules for impact analysis and identifying potential methodologies and data sources. Given that the rules are being promulgated on an

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<sup>68</sup> See, for example, Howell E. Jackson, "Variation in the Intensity of Financial Regulation: Preliminary Evidence and Potential Implications," *Yale Journal of Regulation*, Vol. 24 (2007).

<sup>69</sup> [GAO-08-32](#).

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ongoing basis, we plan to analyze our selected rules on a similar basis once sufficient time has passed.

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## Conclusions

In the immediate future, federal financial regulators will need to craft hundreds of regulations to implement the Dodd-Frank Act's reforms. The breadth of the issues and the short time frames involved present numerous challenges, including allocating sufficient time and resources to developing and analyzing the potential effects of the rules to identify the regulatory alternative with the greatest net benefits. To find that alternative, regulators would ideally monetize the anticipated benefits and costs of regulations during rulemakings. However, anticipating, evaluating, and measuring the potential impact of financial regulations—especially the potential benefits—historically have proven difficult. Indeed, for the rules we reviewed, monetization of costs largely was limited to paperwork-related costs and excluded other direct and indirect costs, and monetization of benefits was nonexistent. These efforts, while positive, fall short of what could be done to determine the potential costs and benefits of the new rules.

The guidelines in OMB Circular A-4 could help in addressing the challenges involved in analyzing the potential costs and benefits. It recognizes that benefits and costs cannot always be monetized or quantified and provides guidance for evaluating their significance when they cannot be. For example, it directs agencies to disclose the strengths and limitations of unquantified benefits and costs, including why they cannot be quantified, and explain the rationale behind a regulatory choice that is made using unquantified information. Although the federal financial regulators are not required to follow this guidance, most of them told us that they did so in spirit or principle. While some regulators had completed some of OMB's recommended analyses, we also found inconsistencies in the extent to which the analyses—and some rulemaking policies—reflected OMB's guidance. For example, the regulators' analyses described the need for regulatory action and described the qualitative benefits and costs of the chosen alternative. However, the analyses did not explain why benefits and costs could not be monetized or quantified and did not discuss the strengths and limitations of the available qualitative information. By taking steps to more fully incorporate OMB's guidelines in their rulemaking policies and procedures, federal financial regulators could enhance the rigor and transparency of their regulatory analyses. By taking such action, regulators could demonstrate the rationale behind their regulatory decisions and ensure that the alternatives they have chosen are in fact the most cost-beneficial options.

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Throughout the implementation of the Dodd-Frank Act rules, coordination among the federal financial regulators will be critical because of the breadth of issues addressed and the number of regulators issuing concurrent rules. With adequate and timely coordination, regulators may avoid overlapping, duplicative, or conflicting rules that could create market inefficiencies. We found that regulators had coordinated on some of the rules that were effective as of July 2011. Such coordination is a positive stepping stone for future coordination. However, we also found that most of the coordination, to date, had been informal and ad hoc. We also found that most of the federal financial regulators included in our review, including CFPB, did not have formal policies to guide interagency coordination. While informal and ad hoc coordination can produce the desired results, such coordination can break down when disagreements arise or other work becomes pressing. Formal policies can institutionalize informal coordination practices and provide a framework for coordinating, helping to ensure that regulators are appropriately consulted and that their views, including conflicting viewpoints, are addressed in a consistent and transparent fashion. Given its membership and charge to help facilitate coordination among its member agencies, FSOC is positioned to work with the federal financial regulatory agencies to establish compatible policies that would guide and facilitate interagency coordination among its members throughout the course of Dodd-Frank Act rulemakings.

After the regulations are implemented, federal financial regulators will need to revisit their prospective analyses of Dodd-Frank Act regulations in light of actual outcomes to help ensure that the Dodd-Frank Act regulations are achieving their intended purpose without creating unintended consequences that negatively impact the markets. The regulators are required to conduct retrospective reviews of their regulations, including rules issued pursuant to the Dodd-Frank Act in the future. However, some of the regulators have not yet developed plans of how to review their Dodd-Frank Act regulations after they are implemented. The regulators are still in the early stages of their rulemaking processes and have issued only a small number of the required rules, but not establishing baseline data early on could complicate later assessments. As we have found, a common challenge to conducting effective retrospective reviews is the lack of baseline data for assessing regulations promulgated years before.<sup>70</sup> By taking steps during

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<sup>70</sup> [GAO-07-791](#).

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the initial rulemaking to determine how to measure the effects of the Dodd-Frank Act regulations, including determining how and when to collect, analyze, and report needed data, federal financial regulators could better position themselves to conduct effective retrospective reviews.

Similarly, under the Dodd-Frank Act, FSOC is also required to conduct periodic studies. As part of these future efforts, FSOC plans to assess significant Dodd-Frank Act regulations, including some that may not have systemic risk implications but could affect the stability, efficiency, or competitiveness of the U.S. financial markets. Opportunities exist for FSOC and its members to leverage and complement each other's retrospective analyses. To date, however, FSOC has not directed the Office of Financial Research to help it identify and collect the data that will be needed. Such planning efforts are important to help ensure that FSOC can not only accurately measure the impact of significant Dodd-Frank Act regulations but also efficiently coordinate with its members to leverage their retrospective reviews.

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## Recommendations for Executive Action

While the federal financial regulators have begun to take steps to address challenges associated with promulgating hundreds of new rules required under the Dodd-Frank Act, we are making four recommendations aimed at improving the efficiency and effectiveness of these efforts.

- To strengthen the rigor and transparency of their regulatory analyses, we recommend that the federal financial regulators take steps to better ensure that the specific practices in OMB's regulatory analysis guidance are more fully incorporated into their rulemaking policies and consistently applied.
- To enhance interagency coordination on regulations issued pursuant to the Dodd-Frank Act, we recommend that FSOC work with the federal financial regulatory agencies to establish formal coordination policies that clarify issues such as when coordination should occur, the process that will be used to solicit and address comments, and what role FSOC should play in facilitating coordination.
- To maximize the usefulness of the required retrospective reviews, we recommend that the federal financial regulatory agencies develop plans that determine how they will measure the impact of Dodd-Frank Act regulations—for example, determining how and when to collect, analyze, and report needed data.

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- To effectively carry out its statutory responsibilities, we recommend that FSOC direct the Office of Financial Research to work with its members to identify and collect the data necessary to assess the impact of the Dodd-Frank Act regulations on, among other things, the stability, efficiency, and competitiveness of the U.S. financial markets.

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## Agency Comments and Our Evaluation

We provided a draft of this report to CFPB, CFTC, FDIC, the Federal Reserve Board, FFIEC, FSOC, NCUA, OCC, and SEC for review and comment. CFTC, CFPB, FDIC, the Federal Reserve Board, FSOC, OCC, and SEC provided written comments that we have reprinted in appendixes V through XI, respectively. All of these regulators also provided technical comments, which we have incorporated, as appropriate. FFIEC and NCUA did not provide any comments on the draft report.

In their written comments, the regulators generally agreed with our findings and conclusions, and some agreed with the recommendations, while others neither agreed nor disagreed but stated actions they had taken or planned to take regarding the recommendations. For example, in their letters, FDIC and SEC noted the challenges of analyzing the economic impact of financial regulations, but recognized the importance of such analysis as part of the rulemaking process. FDIC, OCC, and SEC also noted that they are not subject to E.O. 12866 and the accompanying OMB guidance, although they each agreed to look for opportunities to more fully incorporate the guidance into their rulemaking process. In addition, CFPB noted its commitment to evidence-based rulemaking, and the Federal Reserve Board said it will consider appropriate ways to incorporate applicable recommendations into its rulemaking efforts. With regard to the recommendation on developing coordination policies, FSOC noted the importance of coordination and said it would consider the recommendations as it continues to improve protocols and CFTC outlined its coordination efforts. In addition, while agreeing that interagency coordination is important, OCC and SEC also noted in their letters that efforts to improve coordination through FSOC must be balanced with the need to ensure that the independence of each regulator is not affected. We agree that the independence of the regulators is vital to their work, and we do not believe working with FSOC and the other regulators to establish formal coordination policies will diminish the regulators' independence. To the contrary, establishing coordination policies would allow the regulators and FSOC to clarify their roles, including how coordination should take place given the independence of the regulators and their varying missions.

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We are sending copies of this report to CFPB, CFTC, FDIC, the Federal Reserve Board, FFIEC, FSOC, NCUA, OCC, SEC, interested congressional committees, members, and others. This report will also be available at no charge on our Web site at <http://www.gao.gov>.

Should you or your staff have questions concerning this report, please contact me at (202) 512-8678 or [clowersa@gao.gov](mailto:clowersa@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix XII.



A. Nicole Clowers  
Director  
Financial Markets and  
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*List of Addressees*

The Honorable Harry Reid  
Majority Leader  
The Honorable Mitch McConnell  
Minority Leader  
United States Senate

The Honorable John Boehner  
Speaker  
The Honorable Nancy Pelosi  
Minority Leader  
House of Representatives

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable Pat Roberts  
Ranking Member  
Committee on Agriculture, Nutrition and Forestry  
United States Senate

The Honorable Daniel K. Inouye  
Chairman  
The Honorable Thad Cochran  
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The Honorable Tim Johnson  
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United States Senate

The Honorable John D. Rockefeller IV  
Chairman  
The Honorable Kay Bailey Hutchison  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

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The Honorable Frank D. Lucas  
Chairman  
The Honorable Collin C. Peterson  
Ranking Member  
Committee on Agriculture  
House of Representatives

The Honorable Hal Rogers  
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The Honorable Spencer Bachus  
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# Appendix I: Scope and Methodology

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Our objectives in this report were to examine (1) the regulatory analyses, including benefit-cost analyses, federal financial regulators have performed to assess the potential impact of selected final rules issued pursuant to the Dodd-Frank Act; (2) how federal financial regulators consulted with each other in implementing selected final rules issued pursuant to the Dodd-Frank Act to avoid duplication or conflicts; and (3) what is known about the impact of the final Dodd-Frank Act regulations.

To address these objectives, we limited our analysis to the final rules issued pursuant to the Dodd-Frank Act that were effective as of July 21, 2011, a total of 32 rules.<sup>1</sup> See appendix III. To identify these rules, we used a Web site maintained by the Federal Reserve Bank of St. Louis that tracks Dodd-Frank Act regulations.<sup>2</sup> We corroborated the data with publicly available information on Dodd-Frank Act rulemaking compiled by the law firm Davis Polk and Wardwell.<sup>3</sup>

To address our first objective, we reviewed statutes, regulations, GAO and inspector general studies, and other documentation to identify the benefit-cost or similar analyses federal financial regulators are required to conduct in conjunction with rulemaking. We selected 10 of the 32 rules for further review, comparing the benefit-cost or similar analyses to relevant principles outlined in the Office of Management and Budget's (OMB) Circular A-4. We selected the rules for further review based primarily on the amount of discretion that agency officials were able to exercise in implementing the specific Dodd-Frank Act provision.<sup>4</sup> To determine

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<sup>1</sup> We use the term "rules" in this report generally to refer to Federal Register notices of agency action pursuant to the Dodd-Frank Act, including regulations, interpretive rules, general statements of policy, and rules that deal with agency organization, procedure, or practice.

<sup>2</sup> Federal Reserve Bank of St. Louis, "Dodd-Frank Regulatory Reform Rules - Final Rules and Notices," <http://www.stlouisfed.org/regreformrules/final.aspx>.

<sup>3</sup> Davis Polk and Wardwell, Dodd-Frank Progress Report, "July 22, 2011 Report," <http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report>.

<sup>4</sup> One Dodd-Frank Act rule, Beneficial Ownership Reporting Requirements and Security-Based Swaps, 76 Fed. Reg. 34579 (June 14, 2011), was implemented at the discretion of the Securities and Exchange Commission (SEC) but was not included among the 10 rules in our regulatory analysis study. We omitted the rule from our study because SEC stated that it readopted existing rules without change in order to preserve the regulatory status quo while agency staff continues to develop proposals to modernize reporting requirements under Exchange Act sections 13(d) and 13(g).

agency discretion, we reviewed the Federal Register notices for the agency's determination of the discretion it was granted. To compare these rules to the principles in Circular A-4, we developed a checklist with the principles and applied the checklist to all 10 rules. In conducting each individual analysis, we reviewed the Federal Register notices and any supplemental benefit-cost or similar data prepared by the agencies during the course of the rulemaking. Based on each individual checklist, we prepared a summary checklist that analyzed the extent to which the rules as a group complied with the Circular A-4 principles. We also interviewed officials from the Commodity Futures Trading Commission, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, Financial Stability Oversight Council, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Financial Research, OMB, and Securities and Exchange Commission to determine the extent to which benefit-cost or similar analyses were conducted and whether the analyses were required by statute, regulation, or executive order. Finally, we interviewed officials from the inspectors general of several federal financial regulators; representatives from various industry and other associations, including the American Bankers Association, Americans for Financial Reform, Business Roundtable, Consumer Bankers Association, Futures Industry Association, Independent Community Bankers of America, International Swaps and Derivatives Association, Managed Funds Association, and U.S. Chamber of Commerce; representatives from the American Federation of Labor-Council of Industrial Organizations and Association of Federal, State, County, and Municipal Employees; and others, including academics and consultants, about their views on the benefit-cost analyses being done by federal financial regulators in their Dodd-Frank Act rulemakings.

To address our second objective, we reviewed the Dodd-Frank Act, regulations, and studies, including GAO reports, to identify the coordination and consultation requirements federal financial regulators are required to conduct in conjunction with rulemaking. We selected 18 rules for further review—two of which required interagency coordination under the Dodd-Frank Act. We selected the other rules for further review based primarily on our judgment as to whether the rules could have benefited from any interagency coordination or consultation. To make our determination, we looked for regulations involving issues or subject matters that were overseen by multiple federal financial regulators. Among the 32 rules that were effective as of July 21, 2011, we identified three notices and one list that had coordination or consultation requirements. We did not include these agency releases in our review

because they are not regulations. We then sent out questionnaires for each of the judgmentally selected rules to staff at the regulatory agencies responsible for promulgating the rules. We compiled and reviewed the completed questionnaires to assess how coordination and consultation were taking place between or among the regulatory agencies. We also interviewed officials from the federal financial regulatory agencies identified above to determine the extent to which coordination occurred during their Dodd-Frank Act rulemaking. We sent questionnaires to each federal financial regulatory agency we interviewed to identify what broad policies and procedures they have developed to facilitate interagency coordination and consultation. In addition, we interviewed industry representatives and others identified in objective one to obtain their views on interagency coordination and consultation in connection with the Dodd-Frank Act rulemakings.

To address our third objective, we conducted literature searches to identify academic and other studies that assessed the impact of the Dodd-Frank Act, generally, or its various provisions and regulations, specifically. We reviewed the Federal Register releases for the 32 rules effective as of July 21, 2011, to identify the impact or benefit-cost analysis that the agencies conducted in connection with their rules. For 16 of the 32 rules, we sent questionnaires to the appropriate federal financial regulators to obtain their views on how the rules could impact the six variables enumerated in our mandate, which included the safety and soundness of regulated entities, cost and availability of credit, and costs of compliance with the rules. We also reviewed academic literature to identify potential data sources and methodological approaches and limitations. To identify statutory and other requirements imposed on the federal financial regulators for conducting retrospective or similar reviews of their existing regulations, we reviewed statutes, executive orders, Federal Register releases, and GAO and other reports. Finally, we interviewed the federal financial regulators, industry representatives, and others identified in objective one about the possible data sources and methodological approaches that we could use to analyze the actual impact of the Dodd-Frank Act regulations, individually or cumulatively, in the future and the potential challenges of conducting such analyses.

We conducted this performance audit from April 2011 to November 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

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the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Summary of Common Regulatory Analysis Requirements

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This appendix provides information on commonly applicable requirements for regulatory analysis established by statutes. We included those requirements identified by the Dodd-Frank Act rules within the scope of our review for this report and list the requirements chronologically. For each requirement, we summarize the general purpose, applicability to federal financial regulators, and requirements imposed by the initiatives that were relevant to the rules we examined for this report.

## Administrative Procedure Act

The Administrative Procedure Act (APA) was enacted in 1946 and established the basic framework of administrative law governing federal agency action, including rulemaking. Section 553 of Title 5, United States Code, governs “notice-and-comment” rulemaking, also referred to as “informal” or “APA rulemaking.” Section 553 generally requires (1) publication of a notice of proposed rulemaking, (2) opportunity for public participation in the rulemaking by submission of written comments, and (3) publication of a final rule and accompanying statement of basis and purpose not less than 30 days before the rule’s effective date. Congresses and Presidents have taken a number of actions to refine and reform this regulatory process since the APA was enacted. APA applies to all federal agencies, including federal financial regulators.

## Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) was enacted in response to concerns about the effect that federal regulations can have on small entities. The RFA requires independent and other regulatory agencies, including the federal financial regulators, to assess the impact of their rules on “small entities,” defined as including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. Under the RFA, an agency must prepare an initial regulatory flexibility analysis at the time proposed rules are issued, unless the head of the agency certifies that the proposed rule would not have a “significant economic impact upon a substantial number of small entities.” 5 U.S.C. § 605(b). The analysis must include a consideration of regulatory alternatives that accomplish the stated objectives of the proposed rule and that minimize any significant impact on such entities. However, RFA only requires consideration of such alternatives and an explanation of why alternatives were rejected; the act does not mandate any particular outcome in rulemaking. After the comment period on the proposed rule is closed, the agency must either certify a lack of impact, or prepare a final regulatory flexibility analysis, which among other things, responds to issues raised by public comments on the initial regulatory flexibility analysis. The agencies must make the final analysis available to the public and publish the analysis or a summary of it in the Federal Register. The act also requires agencies to ensure that small entities have an opportunity to

participate in the rulemaking process and requires the Chief Counsel of the Small Business Administration's Office of Advocacy to monitor agencies' compliance. The RFA applies only to rules for which an agency publishes a notice of proposed rulemaking (or promulgates a final interpretative rule involving the internal revenue laws of the United States), and it does not apply to ratemaking.

Paperwork Reduction Act of  
1980

The Paperwork Reduction Act (PRA) requires agencies to justify any collection of information from the public to minimize the paperwork burden they impose and to maximize the practical utility of the information collected. The act applies to independent and other regulatory agencies, including the federal financial regulators. Under the PRA, agencies are required to submit all proposed information collections to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). Information collections generally cover information obtained from 10 or more sources. In their submissions, agencies must establish the need and intended use of the information, estimate the burden that the collection will impose on respondents, and show that the collection is the least burdensome way to gather the information. Generally, the public must be given a chance to comment on proposed collections of information. 44 U.S.C. § 3506(c), 5 C.F.R. § 1320. At the final rulemaking stage, no additional public notice and opportunity for comment is required, although OMB may direct the agency to publish a notice in the Federal Register notifying the public of OMB review.

Unfunded Mandates Reform  
Act of 1995

The Unfunded Mandates Reform Act (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates but does not preclude the implementation of such mandates. UMRA applies to proposed federal mandates in both legislation and regulations, but it does not apply to rules published by independent regulatory agencies, such as the federal financial regulators.<sup>1</sup> With regard to the regulatory process, UMRA generally requires federal agencies to prepare a written statement containing a "qualitative and quantitative assessment of the anticipated costs and benefits" for any rule that includes a federal mandate that may

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<sup>1</sup> The Office of the Comptroller of the Currency (OCC) is an independent regulatory agency, but agency officials told us that OCC complies with UMRA and they continue to apply it to rulemakings.

result in the expenditure of \$100 million or more in any 1 year by state, local, and tribal governments in the aggregate, or by the private sector. For such rules, agencies are to identify and consider a reasonable number of regulatory alternatives and from those select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule (or explain why that alternative was not selected). UMRA also includes a consultation requirement; agencies must develop a process to permit elected officers of state, local, and tribal governments (or their designees) to provide input in the development of regulatory proposals containing significant intergovernmental mandates. UMRA applies only to rules for which an agency publishes a notice of proposed rulemaking.

Small Business Regulatory  
Enforcement Fairness Act

Congress amended RFA in 1996 by enacting the Small Business Regulatory Enforcement Fairness Act (SBREFA). SBREFA included judicial review of compliance with RFA. SBREFA requires agencies to develop one or more compliance guides for each final rule or group of related final rules for which the agency is required to prepare a regulatory flexibility analysis. SBREFA also requires the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau to convene advocacy review panels before publishing an initial regulatory flexibility analysis. The federal financial regulators are subject to SBREFA.

Congressional Review Act

The Congressional Review Act (CRA) was enacted as part of SBREFA in 1996 to better ensure that Congress has an opportunity to review, and possibly reject, rules before they become effective. CRA established expedited procedures by which members of Congress may disapprove agencies' rules by introducing a resolution of disapproval that, if adopted by both Houses of Congress and signed by the President, can nullify an agency's rule. CRA applies to rules issued by independent and other regulatory agencies, including the federal financial regulators. CRA requires agencies to file final rules with both Congress and GAO before the rules can become effective. GAO's role under CRA is to provide Congress with a report on each major rule (rules resulting in or likely to result in a \$100 million annual impact on the economy, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises) including GAO's assessment of the issuing agency's compliance with the procedural steps required by various acts and executive orders governing the rulemaking process.

# Appendix III: Dodd-Frank Act Rules Effective as of July 21, 2011

Rulemaking	Responsible regulator	Effective date	Did the regulator have some level of discretion?	Did the regulator identify the rule as having significant economic impact?
Deposit Insurance Regulations; Permanent Increase in Standard Coverage Amount; Advertisement of Membership; International Banking; Foreign Banks (75 Fed. Reg. 49363)	FDIC	8/13/2010	No	No
Display of Official Sign; Permanent Increase in Standard Maximum Share (75 Fed. Reg. 53841)	NCUA	9/2/2010	No	No
Internal Controls over Financial Reporting in Exchange Act Periodic Reports (75 Fed. Reg. 57385)	SEC	9/21/2010	No	No
Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers (75 Fed. Reg. 60616)	SEC	10/1/2010	N/A	N/A
Removal from Regulation FD of the Exemption for Credit Rating Agencies (75 Fed. Reg. 61050)	SEC	10/4/2010	No	No
Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries (75 Fed. Reg. 55410)	CFTC	10/18/2010	Yes	No
Deposit Insurance Regulations: Unlimited Coverage for Noninterest-Bearing Transaction Accounts (75 Fed. Reg. 69577)	FDIC	12/31/2010	No	No
Designated Reserve Ratio (75 Fed. Reg. 79286)	FDIC	1/1/2011	Yes	No
Rules of Practice – Handling of Proposed Rule Changes Submitted by Self-Regulatory Organizations (76 Fed. Reg. 4066)	SEC	1/24/2011	N/A	N/A
Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts; Inclusion of Interest on Lawyers Trust Accounts (76 Fed. Reg. 4813)	FDIC	1/27/2011	No	No
Issuer Review of Assets in Offerings of Asset-Back Securities (76 Fed. Reg. 4231)	SEC	3/28/2011	Yes	Yes
Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (76 Fed. Reg. 4489)	SEC	3/28/2011	Yes	Yes
Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities (76 Fed. Reg. 8265)	Federal Reserve Board	4/1/2011	Yes	No
Assessments, Large Bank Pricing (76 Fed. Reg. 10672)	FDIC	4/1/2011	Yes	No
Higher Rate Threshold for Escrow Requirements (76 Fed. Reg. 11319)	Federal Reserve Board	4/1/2011	No	No
Shareholder Approval of Executive Compensation and Golden Parachute Compensation (76 Fed. Reg. 6010)	SEC	4/4/2011	Yes	Yes
Establishment of the FDIC Systemic Resolution Advisory Committee (76 Fed. Reg. 25352)	FDIC	4/28/2011	N/A	N/A

**Appendix III: Dodd-Frank Act Rules Effective  
as of July 21, 2011**

<b>Rulemaking</b>	<b>Responsible regulator</b>	<b>Effective date</b>	<b>Did the regulator have some level of discretion?</b>	<b>Did the regulator identify the rule as having significant economic impact?</b>
Order Directing Funding for the Governmental Accounting Standards Board (76 Fed. Reg. 28247)	SEC	5/16/2011	N/A	N/A
Share Insurance and Appendix (76 Fed. Reg. 30250)	NCUA	6/24/2011	No	No
Modification of Treasury Regulations Pursuant to Section 939A of the Dodd- Frank Wall Street Reform and Consumer Protection Act (76 Fed. Reg. 39278)	Treasury	7/6/2011	No	No
Retail Foreign Exchange Transactions (76 Fed. Reg. 40779)	FDIC	7/15/2011	Yes	No
Retail Foreign Exchange Transactions (76 Fed. Reg. 41375)	OCC	7/15/2011	Yes	No
Beneficial Ownership Reporting Requirements and Security-Based Swaps (76 Fed. Reg. 34579)	SEC	7/16/2011	Yes <sup>a</sup>	No
Prohibition Against Payment of Interest on Demand Deposits (76 Fed. Reg. 42015)	Federal Reserve Board	7/21/2011	No	No
List of OTS Regulations to be Enforced by the OCC and FDIC Pursuant to the Dodd-Frank Act (76 Fed. Reg. 39246)	OCC/FDIC	7/21/2011	N/A	N/A
Office of Thrift Supervision Integration; Dodd-Frank Act Implementation (76 Fed. Reg. 43549)	OCC	7/21/2011	N/A	N/A
Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than \$150 Million in Assets under Management, and Foreign Private Advisers (76 Fed. Reg. 39646)	SEC	7/21/2011	Yes	No
Consumer Transfer Protection Date (75 Fed. Reg. 57252)	CFPB	7/21/2011	N/A	N/A
Identification of Enforceable Rules and Orders (76 Fed. Reg. 43569)	CFPB	7/21/2011	N/A	N/A
Consumer Leasing – Exempt Consumer Credit under Regulation M (75 Fed. Reg. 18349)	Federal Reserve Board	7/21/2011	No	No
Truth in Lending – Exempt Consumer Credit under Regulation Z (76 Fed. Reg. 18354)	Federal Reserve Board	7/21/2011	No	No
Interest on Deposits; Deposit Insurance Coverage (76 Fed. Reg. 41392)	FDIC	7/21/2011	No	No

Source: GAO summary of information from the Federal Reserve Bank of St. Louis (<http://www.stlouisfed.org/regreformrules/final.aspx>).

Note: We use the term “rules” in this report generally to refer to Federal Register notices of agency action pursuant to the Dodd-Frank Act, including regulations, interpretive rules, general statements of policy, and rules that deal with agency organization, procedure, or practice. N/A refers to “not applicable” and includes those rulemakings related to interpretive rules, general statements of policy, and rules that deal with agency organization, procedure, or practice, and thus not subject to APA requirements. In some instances, we found that an agency had discretion to implement the statute, even though the discretion was limited, because the exercise of discretion was important to implementation.

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This rule was implemented at the discretion of SEC but was not included among the 10 rules in our regulatory analysis study. We omitted the rule from our study because SEC stated that it readopted existing rules without change in order to preserve the regulatory status quo while agency staff continues to develop proposals to modernize reporting requirements under Exchange Act sections 13(d) and 13(g).

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# Appendix IV: Case Studies of 10 Selected Rules

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This appendix provides case studies on 10 final rules issued pursuant to the Dodd-Frank Act that were effective as of July 21, 2011, and reviewed for this report. At the beginning of each case study is the official rule title as published in the Federal Register. The body of each case study includes a synopsis of the rule; a discussion of the key aspects of the regulatory analysis, including the assessment of the benefits and costs, addressed in the proposed and final rules; the number, nature, and disposition of public comments regarding the regulatory analysis; and identifying information.

**Rule Synopsis.** Provides summary information about the substance and effects of the rule, such as the intent or purpose of the rule, a brief discussion of the rule's origin, rulemaking history, or regulatory authority upon which the rule was created.

**Key Aspects of Regulatory Analysis.** Identifies generally-applicable rulemaking requirements discussed by the agency in the proposed and final rules as published in the Federal Register. These requirements include identification of the problem addressed by the rule, consideration of alternatives reflecting the range of statutory discretion, the Paperwork Reduction Act (PRA), the Regulatory Flexibility Act (RFA), benefit-cost analysis, and agency-specific statutory requirements.

**Public Comments.** Identifies the total number of public comments received by the agency with respect to the rule and the number, nature, and disposition of public comments regarding the agency's regulatory analysis.

**Identifying Information.** Identifies the responsible federal agency, citation in the Federal Register of the final rule, and date of the proposed rule and final rule.

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## Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries

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### Rule Synopsis

The Commodity Futures Trading Commission (CFTC) issued the rule to implement provisions of the Dodd-Frank Act, specifically Section 742, and the CFTC Reauthorization Act of 2008<sup>1</sup> with respect to off-exchange transactions in foreign currency with members of the retail public. The Rule was proposed in January 2010 prior to the enactment of the Dodd-Frank Act, but in final form also implements Section 742 which requires that specified federal regulatory agencies, including CFTC, promulgate rules regarding retail forex transactions. The regulations establish requirements for, among other things, registration, disclosure, recordkeeping, financial reporting, minimum capital, and other operational standards.

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### Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: In addition to regulations expressly called for by the Dodd-Frank Act and CFTC Reauthorization Act, CFTC included additional regulatory requirements prompted both by the essential differences between on-exchange transactions and retail forex transactions, and by the history of fraudulent practices in the retail forex market.
- Consideration of alternatives reflecting the range of statutory discretion:
  - Based on the comments received, CFTC adopted a revised security deposit requirement for futures commission merchants (FCM) and retail foreign exchange dealers (RFED), which, in part,

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<sup>1</sup> The CFTC Reauthorization Act was intended, among other things, to further clarify CFTC's jurisdiction in the area of retail foreign exchange transactions, and to give CFTC additional authority to regulate retail foreign exchange transactions. To remedy the large number of fraud cases where jurisdiction had been questioned, the CFTC Reauthorization Act gave CFTC jurisdiction over certain leveraged retail foreign exchange contracts without regard to whether it could prove the contracts were off-exchange futures contracts. See 75 Fed. Reg. 3282 (Jan. 20, 2010).

permits security deposit levels within set parameters and provides a mechanism for setting security deposit levels anchored in, and adaptable to, market conditions.

- CFTC determined that FCMs and RFEDs must provide information regarding profitable or not profitable accounts for the four most recent quarters, and upon request, provide historical quarterly performance for the five most recent years. In response to commenter suggestions, CFTC clarified the definition of “not profitable” to clearly include accounts that break even.
- While initially proposing that any introducing broker (IB) must enter into a guarantee agreement with an FCM or an RFED, upon reviewing comments, CFTC’s final rule states that IBs who register in order to transact retail forex business can choose between entering into a guarantee agreement with an FCM or RFED, or maintaining the existing IB minimum net capital requirement.
- CFTC’s final rule implements a \$20 million minimum net capital requirement for FCMs engaging in retail forex transactions and for RFEDs, and additional requirements to the extent that an FCM’s or RFED’s total retail forex obligation to its customers exceed \$10 million. The rule was adopted without the commenter’s proposed straight-through processing exemption because the proposed additional capital requirement was intended to provide a capital requirement that directly relates to the size of the firm’s liability to retail forex customers and some firms offering retail forex transactions have liabilities to retail customers exceeding \$10 million.
- While some commenters argued a personal responsibility requirement would discourage any individual from taking the position, CFTC’s final rule requires each retail forex counterparty to designate a chief compliance officer.
- CFTC’s final rule prohibits the making of guarantees against loss to retail foreign exchanges customers by FCMs, RFEDs, and IBs, even though some commenters argued some guarantees should be permissible.
- While one commenter found the requirement unnecessary, CFTC’s final rule states that RFEDs and FCMs engaging in off-exchange retail forex transactions must close out offsetting long and short positions in a retail forex customer’s account, regardless of whether the customer instructs otherwise.
- After reviewing comments, the CFTC’s final rule, just as the proposed rule did, created a prohibition against providing a customer a new bid (or asked) price that is higher (or lower) than

- a previous price without providing a new asked (or bid) price that is higher (or lower) as well.
- CFTC's final rule enforces its authority to regulate retail "futures look-alike" forex contracts, as CFTC disagreed with one commenter's position that such a regulation was not statutorily permissible.
- After reviewing comments arguing confusion was created by the wording, CFTC's final rule maintained the definition of retail forex transactions.
- While some commenters argue such rules are anticompetitive, CFTC's final rules differ from those applicable to entities engaged in futures transaction on designated contract markets in ways that reflect meaningful differences in the market structure of retail forex transactions.
- PRA: CFTC determined that this final rule contains information collection requirements within the meaning of the act, which it submitted to the Office of Management and Budget (OMB). CFTC estimated that the total estimated reporting burden for regulated entities subject to the regulation would be approximately 222,000 hours.
- RFA: CFTC determined that the regulation would not have a significant impact on a substantial number of small entities.
- Benefit-cost analysis:

	Benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
<b>Benefits</b>				
Enhance protection of market participants and the public.	No	N/A	None	Yes
Comparable regulatory regimes for FCMs and RFEDs.	No	N/A	None	Yes
Comparable regulatory regime to on-exchange forex transactions.	No	N/A	None	Yes
Requires sound risk management practices.	No	N/A	None	Yes
Oversight of forex counterparties and intermediaries.	No	N/A	None	Yes
<b>Costs</b>				
Preparing and filing required disclosures.	No	N/A	None	Yes

N/A = not applicable.  
Source: GAO.

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## Public Comments

- Number of days to comment: 60
- Number of comments received: over 9,100
- Comments regarding regulatory analysis: None

### Identifying Information

- Agency: CFTC
- Date of proposed rule: January 20, 2010
- Date of final rule: September 10, 2010
- Effective date: October 18, 2010
- Federal Register citation: 75 Fed. Reg. 55410

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## Designated Reserve Ratio

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### Rule Synopsis

The Dodd-Frank Act provides the Federal Deposit Insurance Corporation (FDIC) with greater authority to manage the Deposit Insurance Fund (DIF), including where to set the designated reserve ratio (DRR). Section 334 of the act sets the minimum DRR at 1.35 percent (from the former of 1.15 percent) and removes the previous upper limit, which was set at 1.5 percent. Section 334 of the act also requires the DRR to reach 1.35 percent by September 30, 2020, and Section 332 removes the requirement of FDIC to pay dividends when the ratio is between 1.35 percent and 1.5 percent. Pursuant to the requirements and authority within the Dodd-Frank Act, FDIC is adopting a DRR of 2 percent. Ultimately, FDIC will maintain at least 2 percent in the fund, as the 2 percent fund goal is a long-range, minimum target. FDIC also will adopt a progressively lower assessment rate schedule when the reserve ratio exceeds 2 percent and 2.5 percent. The progressively lower rates will essentially serve the function of dividend payments.

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### Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: FDIC is increasing the DRR to ensure DIF is able to keep a positive balance during a future crisis of the magnitude of the 2007-2009 financial crisis. Additionally, it sets rate schedules that are consistent and moderate throughout economic and credit cycles.

- Consideration of alternatives reflecting the range of statutory discretion:
  - FDIC considered commenter positions encouraging a lower DRR but determined a 2 percent DRR at a minimum would allow the fund to survive the crisis of an economic downturn.
- PRA: FDIC did not conduct a PRA analysis because no collection of information is required for this rule.
- RFA: FDIC conducted an analysis and concluded that DRR has no significant economic impact on small entities for purposes of RFA.
- Benefit-cost analysis:

	Were the benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
<b>Benefits</b>				
Prevent DIF from becoming negative during a future financial crisis.	No	N/A	None	Yes
Reduce procyclicality in the existing risk-based assessment rates.	No	N/A	None	Yes
<b>Costs</b>				
Loss of funds that could be used by the banking system.	No	N/A	None	Yes
Increased competitive imbalances between banking entities and credit unions.	No	N/A	None	Yes

N/A = not applicable.  
Source: GAO.

## Public Comments

- Number of days to comment: 30
- Number of comments received: 4
- Comments regarding regulatory analysis:
  - Commenters expressed concerns that FDIC's analysis ignored historical over-reserving, to which FDIC responded that its analysis encompassed reported contingent loss reserves, and emphasized the importance of public confidence as a reason that the fund be significantly positive and not just not negative.
  - One commenter argued that the analysis failed to account for interest income from the reserve. FDIC responded that interest income was included along with an explanation of the cyclical nature of stable times interrupted by periods of high loss which significantly decrease the fund.

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## Identifying Information

- Agency: FDIC
- Date of proposed rule: October 27, 2010
- Date of final rule: December 20, 2010
- Effective date: January 1, 2011
- Federal Register citation: 75 Fed. Reg. 79286

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## Issuer Review of Assets in Offerings of Asset-Backed Securities

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### Rule Synopsis

Section 945 of the Dodd-Frank Act mandated that the Securities and Exchange Commission (SEC) issue a rule relating to the registration statement required by issuers of asset-backed securities (“ABS”). The rule must require issuers of asset-backed securities to perform a review of the assets underlying the asset-backed security and disclose the nature of the review. To implement Section 945 of the Dodd-Frank Act, SEC adopted a new rule under the Securities Act of 1933 and amendments to Regulation AB.<sup>2</sup> The rule requires an issuer of registered offerings of asset-backed securities to perform a review of the assets underlying the securities that “must be designed and effected to provide reasonable assurances that the disclosure regarding the pool assets in the prospectus is accurate in all material respects.”<sup>3</sup> The Regulation requires disclosure regarding: “[t]he nature of the review of assets conducted by an [ABS] issuer”; “[t]he findings and conclusions of a review of assets conducted by an [ABS] issuer or third party”; “[d]isclosure regarding assets in the pool that do not meet the underwriting standards”;

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<sup>2</sup> The initial proposed rule also included “consideration of rules to implement Section 15E(s)(4)(A) of the Exchange Act, which requires issuers or underwriters of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report the issuer or underwriter obtains.” 75 Fed. Reg. 4232. The final adoption has been delayed based on the suggestion by several commentators that the new Exchange Act Section 15E(s)(4) should be read as a whole. *Id.*

<sup>3</sup> 76 Fed. Reg. 4241.

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and “[d]isclosure regarding which entity determined that the assets should be included in the pool....”<sup>4</sup>

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## Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: Section 945 of the Dodd-Frank Act reflects the testimony provided to Congress that due diligence practices in ABS offerings had eroded significantly.
- Consideration of alternatives reflecting the range of statutory discretion:
  - SEC considered the entity which must conduct a review, and upon reviewing comments, determined that the asset review must be conducted by the issuer of the asset-backed security. However, the review only applies to issuers of asset-backed securities in registered offerings, and excludes those in unregistered offerings.
  - Upon review of alternative review standards, SEC adopted minimum review standards based on flexible, principles-based standards that “would be workable across a wide variety of asset classes and issuers.” However, the particular type of review the issuer must perform is not specified.
  - SEC reviewed comments regarding the applicability and impact of third parties conducting reviews. Ultimately, SEC determined an issuer may, but is not required, to rely on a third-party to conduct the review. However, if the issuer attributes the review’s findings and conclusion to the third party, the third party must be named in the registration statement and be treated as an expert. But the issuer can use the same findings and attribute the findings and conclusions to the issuer to avoid needing to obtain the third party’s consent to be named an expert.
  - SEC requires the issuer to (i) disclose the nature of the review including if it is conducted by a third party, the scope of the review; (ii) disclose the findings and conclusions; and (iii) disclose how the assets in the pool deviate from the disclosed criteria and name the entity that made the decision to include the exception loans in the pool.
- PRA: SEC determined that this final rule contains information collection requirements within the meaning of the act, which it

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<sup>4</sup> *Id.*

submitted to OMB. The requirements are entitled “Form S-1” (OMB Control Number 3235-0065), “Regulation S-K” (OMB Control Number 3235-0071), and “Rule S-3” (OMB Control Number 3235-0073). SEC estimates an increase in burden hours with Form S-1 and S-3 of about 7,000 hours and \$8.4 million. Form S-K will not impose any separate burden.

- RFA: The Commission certified in the proposing release that the regulation would not have a significant impact on a substantial number of small entities. The Commission requested written comment regarding the certification, but no commenter responded to the request.
- Benefit-cost analysis:

	Were the benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Alternative description of the benefits or costs?
<b>Benefits</b>				
Increase investor protection.	No	N/A	None	Yes
Reduce the cost of information asymmetry.	No	N/A	None	Yes
Allow investors to more accurately price a securitization of the asset pool.	No	N/A	None	Yes
Allow investors to better understand the credit risk of the asset pool.	No	N/A	None	Yes
More loan pools that conform to the disclosures.	No	N/A	None	Yes
More thorough and accurate reviews.	No	N/A	None	Yes
Facilitate comparability among reviews performed by different issuers.	No	N/A	None	Yes
Assist rating agencies in assigning more informed credit ratings.	No	N/A	None	Yes
The third party expert liability could increase the quality of the review. <sup>5</sup>	No	N/A	None	Yes
<b>Costs</b>				
Some issuers may incur additional costs to perform more extensive reviews.	No	N/A	None	Yes

<sup>5</sup> Although issuers in registered offerings are not required to use a third party to satisfy the review requirement, if the findings and conclusions of the review will be attributed to a third party, a third party would be required to consent to being named in the registration statement and thereby accept potential expert liability.

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Were the benefits or costs monetized?</b>	<b>Estimated impacts (in millions)</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Alternative description of the benefits or costs?</b>
Some issuers, who otherwise may have performed a more thorough review, may choose to accomplish no more than the minimum required review.	No	N/A	None	Yes
Expert liability may increase the cost of due diligence, which could render securitizations non-economic for some issuers.	No	N/A	None	Yes
Some asset classes may not have third party due diligence providers.	No	N/A	None	Yes
Third party review firms are not registered with the SEC and some are not subject to professional standards.	No	N/A	None	Yes
Disclosure burden.	No	N/A	None	Yes
Incremental professional costs of the collection of information through forms S-1 and S-3.	Yes	\$8.4	N/A	Yes

N/A = not applicable.

Source: GAO.

- **Burden on Competition and Promotion of Efficiency, Competition, and Capital:** According to SEC, the regulation and amendments are designed to improve investor protection, the quality of the assets underlying an ABS, and increase transparency to market participants. SEC also states that the amendments would improve investors' confidence in ABS and help recovery in the ABS market with attendant positive effects on efficiency, competition and capital formation.

**Public Comments<sup>6</sup>**

- Number of days to comment: 33 days
- Number of comments received: Over 50
- Comments regarding regulatory analysis:
  - Some commenters suggested including unregistered offering within the requirement to prevent abuses from migrating to those offerings. Others argued that the rules should apply only to registered ABS offerings.

<sup>6</sup> In addition to the comment period for this particular rule, to facilitate public input on the Dodd-Frank Act, SEC provided on its Web site a series of e-mail links, organized by topic, that allowed for the submission of comments.

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- Some commenters stated that there are incentives not to conduct adequate due diligence, which supports the need for a minimum standard requirement by law.
  - One commenter predicted that requiring third parties to be named in the registration statement as experts will materially impact the cost of due diligence services which will likely render securitizations non-economic for issuers.
  - Some commenters stated that it is possible that third parties engaged by issuers to perform the review may be unwilling to consent to being named in the registration statement as experts.

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Identifying Information

- Agency: SEC
- Date of proposed rule: October 13, 2010
- Date of final rule: January 25, 2011
- Effective date: March 28, 2011
- Federal Register citation: 76 Fed. Reg. 4231

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Disclosure for Asset-  
Backed Securities  
Required by Section  
943 of the Dodd-Frank  
Wall Street Reform  
and Consumer  
Protection Act

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Rule Synopsis

Section 943 of the Dodd-Frank Act requires SEC to prescribe regulations on the use of representations and warranties in the market for asset-backed securities (ABS). The rule requires ABS securitizers to disclose fulfilled and unfulfilled repurchase requests. Specifically, ABS securitizers must disclose demand, repurchase and replacement history for an initial 3-year look back period ending December 31, 2011, and going forward on a quarterly basis. Further, ABS issuers must disclose demand, repurchase and replacement history for the same 3-year look back period in the body of the prospectus, and in periodic reports filed going forward. The rule also requires nationally recognized statistical rating organizations (NRSRO) to include information regarding the representations, warranties and enforcement mechanisms available to investors in an ABS offering in any report accompanying a credit rating

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issued in connection with such offering, including a preliminary credit rating.

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## Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: According to SEC, the effectiveness of the contractual provisions related to representations and warranties has been questioned and lack of responsiveness by sponsors to potential breaches of the representations and warranties relating to the pool assets has been the subject of investor complaint.
- Consideration of alternatives reflecting the range of statutory discretion:
  - Upon reviewing comments detailing impacts of duplicative filing, SEC required all securitizers to complete the transaction file Form ABS-15G, unless they are affiliated securitizers.
  - While some commenters discouraged inclusion of municipal securitizers, the final rules applies to municipal securitizers but provides delayed compliance to permit municipal securitizers time to observe how the rule operates for other securitizers and to better prepare for implementation of the rule.
  - SEC finalized disclosure form requirements including several changes from the proposed forms based on comments including one commenter's suggestion to insert a column to disclose the number of outstanding principal balance and percentage of principal balance of the assets originated by each originator in the pool.
  - SEC finalized a 3-year historical look back time frame by balancing commenter suggestions regarding the hardships of collecting data for a more lengthy historical period against the benefit to investors. Additionally, SEC adopted a quarterly reporting time frame for filing requirements instead of the proposed monthly time frame based on comments.<sup>7</sup>

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<sup>7</sup> Rule 15Ga-1 requires any securitizer of asset-backed securities to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

- SEC amended the Regulation AB transaction disclosure requirements and included phasing in periods for inclusion in the prospectus.<sup>8</sup>
- Upon reviewing commenters' reasons for a standard, SEC's final rule permitted the NRSROs to determine what similar securities should be used in the disclosure comparison. Similarly, SEC reviewed comments with regard to other NRSRO disclosure requirements.
- PRA: SEC determined that this final rule contains information collection requirements within the meaning of the act, which it submitted to OMB. The requirements are entitled "Form ABS-15G" (a new information collection requirement), "Regulation S-K" (OMB Control Number 3235-0071), and "Rule 17g-7" (a new information collection requirement). SEC estimates the total internal burden hours associated with Form ABS-15G will be 189,068 and the total external costs will be \$25,209,000. SEC determined that Regulation S-K will not impose any separate burden. SEC estimates that it will take a total of 90,948 hours annually to comply with the Rule 17g-7 requirements, but no professional costs were associated.
- RFA: The Commission certified in the proposing release that the regulation would not have a significant impact on a substantial number of small entities. The Commission requested written comment regarding the certification, but no commenter responded to the request.
- Benefit-cost analysis:

	Benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
<b>Benefits</b>				
Provide demand, repurchase, and replacement information that is easy to use and compare across securitizers.	No	N/A	None	Yes

<sup>8</sup> This rule amends Regulation AB with respect to disclosures regarding sponsors in prospectuses and with respect to disclosures about the asset pool in periodic reports, so that issuers would be required to include the disclosures in the same format as required by Rule 15Ga-1.

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Benefits or costs monetized?</b>	<b>Estimated impacts (in millions)</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Qualitative description of the benefits or costs?</b>
Initial 3-year look back period should allow investors to identify originators with underwriting deficiencies.	No	N/A	None	Yes
Quarterly report includes information for current quarter only so investors will have flexibility to track activity over periods of their choosing.	No	N/A	None	Yes
Securitizer may suspend quarterly obligation if it has no reportable activity.	No	N/A	None	Yes
Cross-affiliates need not file same disclosures for a particular transaction.	No	N/A	None	Yes
Disclosures filed on EDGAR or EMMA create centralized repository.	No	N/A	None	Yes
One-year transition period for securitizers, and additional 3-year transition for municipal securitizers, to better prepare.	No	N/A	None	Yes
Disclosures in prospectus and periodic reports under Regulation AB will facilitate investor use of information.	No	N/A	None	Yes
Disclosures about representations by NRSROs will provide information before investment decision.	No	N/A	None	Yes
<b>Costs</b>				
External professional costs for preparing and filing required disclosures.	Yes	\$25	N/A	Yes
Transition periods will delay availability of current information to investors.	No	N/A	None	Yes
Data collection for initial 3-year look back period may be costly.	No	N/A	None	Yes
Investors wanting cumulative data will need to make additional efforts to compile it.	No	N/A	None	Yes
Investors wanting information about affiliated transactions will need to compile it.	No	N/A	None	Yes
NRSROs incur additional costs.	No	N/A	None	Yes

N/A = not applicable.  
Source: GAO.

- **Burden on Competition and Promotion of Efficiency, Competition, and Capital:** SEC determined that the ultimate effect of the regulation would be that of better allocative efficiency and improved capital formation. Because the rules generally apply equally to all securitizers, and ABS transactions, SEC did not believe the rules would have an impact on competition.

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Public comments<sup>9</sup>

- Number of days to comment: 42
- Number of comments received: over 40
- Comments regarding regulatory analysis:
  - Commenters provided suggestions for the transition time frame varying from 6 months to 2 years from the effective date of the rule.
  - One commenter argued that the PRA estimate for Rule 17g-7 underestimated the time needed to gather required information, but SEC found that the commenter overlooked additional agency analysis of the time requirements and thus made no change.

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Identifying Information

- Agency: SEC
- Date of proposed rule: October 4, 2010
- Date of final rule: January 26, 2011
- Effective date: March 28, 2011
- Federal Register citation: 76 Fed. Reg. 4489

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Conformance Period  
for Entities Engaged  
in Prohibited  
Proprietary Trading or  
Private Equity Fund  
or Hedge Fund  
Activities

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Rule Synopsis

Section 619(c)(2) of the Dodd-Frank Act generally requires banking entities and nonbank financial holding companies supervised by the Board of Governors of the Federal Reserve System (Board) to conform their activities and investments to the restrictions of Section 619 (Volcker Rule) within 2 years of the effective date of the Volcker Rule's requirements. The Volcker Rule generally prohibits banking entities from engaging in proprietary trading or from investing in, sponsoring or having

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<sup>9</sup> In addition to the comment period for this particular rule, to facilitate public input on the Dodd-Frank Act, SEC provided on its Web site a series of e-mail links, organized by topic, that allowed for the submission of comments.

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certain relationship with a hedge fund or private equity fund. The final rule details the provisions and requirements a banking entity or nonbank financial company supervised by the Board must follow to request an extension of time to conform its activities to the Volcker Rule.

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## Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: The Volcker Rule includes provisions relative to illiquid assets. The final rule was issued in advance of the Volcker Rule regulations to craft the procedures and requirements necessary to receive an extension to the time frame mandated to conform to the Volcker Rule requirements for divestiture.
- Consideration of alternatives reflecting the range of statutory discretion:
  - While commenters requested one single extension of three years, instead of three extensions of 1 year, the Board determined the Volcker Rule only permitted 1 year extensions per request. Additionally, the Board clarified, at commenter's request, that the extensions were applicable to both banking entities and nonbank financial companies supervised by the Board.
  - Commenters made multiple suggestions regarding alterations to the proposed definition of illiquid assets, but the Board maintained the proposed definition in large part because of restrictions included in the Volcker Rule.
  - While some commenters encouraged a more lenient standard, the Board's final rule maintained the proposed rules for determination of "principally invested" when used to determine the availability of the extended transition period. Additionally, after consideration of commenters' perspectives, the Board also maintained the statutorily mandated May 1, 2010, date used to determine illiquidity of assets.
  - The Board, upon review of commenter requests, determined that the Volcker Rule provides that any extended transition granted by the Board will automatically, upon operation of law, terminate on the date on which the contractual obligation to invest in the illiquid fund terminates.
  - Based on commenter requests, the Board modified the final rule to permit for a request at least 180 days prior to the expiration of the applicable period, and the Board will seek to act on any extension request no later than 90 days after receipt of all necessary information relating to the request.
  - The Board modified those factors used to determine the appropriateness of an extension, including adding whether

divestiture or conformance of the activity or investment would involve or result in a material conflict of interest between the banking entity and unaffiliated clients, customers or counterparties.

- The Board broadened the types of documents that may be considered in determining whether a hedge fund or private equity fund is contractually committed to principally invest in illiquid assets or contractually obligated to invest or remain invested in the fund.
- PRA: The Board determined that this final rule contains information collection requirements within the meaning of the act, which it submitted to OMB. The Board estimates the total internal burden hours associated with the rule will be 21,600, but does not attempt to quantify the total internal costs.
- RFA: The Board determined that the regulation would not have a significant impact on a substantial number of small entities. It based this determination on its estimate that only 5 percent of small banking entities likely would file an extension request under the rule.
- Benefit-cost analysis: None

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Public comments:

- Number of days to comment: 45
- Number of comments received: 12
- Comments regarding regulatory analysis:
  - Some commenters argued that the PRA estimate underestimated the time needed to prepare a request for an extension and relevant supporting information. One commenter specifically noted that a banking entity could potentially have to submit up to four extension requests with respect to a single illiquid fund. In light of those comments, the Board revised its initial request from 1 to 3 hours and estimates that each of the 720 banking entities that are estimated to file an extension will file, on average, 10 requests, for a total estimated annual burden of 21,600 hours. This is in contrast to the initial estimate amount of annual burden of 720 hours.

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Identifying Information

- Agency: Board of Governors of the Federal Reserve System
- Date of proposed rule: November 26, 2010
- Date of final rule: February 14, 2011
- Effective date: April 1, 2011
- Federal Register citation: 76 Fed. Reg. 8265

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## Assessments, Large Bank Pricing

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### Rule Synopsis

FDIC charges insured depository institutions an amount for deposit insurance equal to the deposit insurance assessment base multiplied by a risk-based assessment rate. The Dodd-Frank Act directs FDIC to amend its regulations to define the assessment base used for calculating deposit insurance assessments. The Dodd-Frank Act requires that the assessment base be defined as an institution's "average consolidated total assets" minus "average tangible equity." The rule defines the methodology for calculating these amounts, determines the basis for reporting the amounts, and defines "tangible equity." The Dodd-Frank Act also requires that FDIC determine whether and to what extent adjustments to the assessment base are appropriate for banker's banks<sup>10</sup> and custodial banks. The rule outlines these adjustments and provides a definition of "custodial bank." Due to the change in the assessment base, FDIC also defines certain adjustments to the assessment calculation that were added to better account for risks among insured depository institutions (IDI) based on their funding sources. The required change in the assessment base prompted FDIC to modify its assessment rate system and assessment rate schedule. The Dodd-Frank Act also continued FDIC authority to declare dividends when the reserve ratio of the deposit insurance fund (DIF) is at least 1.5 percent and granted FDIC authority to suspend or limit dividends from the DIF.<sup>11</sup> The rule provides that dividends be suspended indefinitely when the DIF reserve ratio exceeds 1.5 percent. The rule also amends the assessment system applicable to large insured depository institutions.

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### Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: According to FDIC, the purpose of the regulation is to address requirements under the Dodd-Frank Act and to provide a revised assessment rate schedule. The overall FDIC goal is increasing the designated reserve ratio

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<sup>10</sup> Banker's banks must be owned exclusively by depository institutions or depository institution holding companies and all of their subsidiaries must be engaged exclusively in providing services to or for other depository institutions, and the officers, directors and employees thereof.

<sup>11</sup> 12 U.S.C. § 1817(e)(2)(B). In lieu of dividends, the rule provides for progressively lower assessment rates when the DIF reserve ratio exceeds 2 percent and 2.5 percent.

(DRR) to ensure DIF maintains a positive balance during a future crisis of the magnitude of the 2007-2009 financial crisis. Additionally, the goal is to set rate schedules that are consistent and moderate throughout economic and credit cycles.

- Consideration of alternatives reflecting the range of statutory discretion:
  - FDIC determined that goodwill and intangibles should not be deducted in determining average consolidated total assets.
  - FDIC considered comments addressing the timing of requirements for IDI reporting of consolidated total equity and average tangible equity and imposed more frequent reporting requirements on larger institutions.
  - FDIC determined that transactions between affiliated banks should not be excluded from the assessment base.
  - FDIC considered and rejected comments concerning the deductions from the assessment base for banker's banks and amended the calculation of the assessment base adjustment for custodial banks.
  - FDIC considered comments on adjustments to the rate base based on the amount of unsecured debt and the amount of brokered deposits held by the institution.
  - In the proposed rule, FDIC had proposed suspending dividends from the DIF "permanently." The final rule modified the proposal by suspending dividends "indefinitely" and noted that the rule is not intended to, and could not, abrogate the authority of future FDIC Boards of Directors to adopt a different rule governing dividends.
  - FDIC considered comments concerning the appropriateness of the changes to the assessment rate schedule and the speed at which these rates would restore the DIF to the desired level. The FDIC also considered comments on future rate schedules and their effect on the DIF.
  - The regulation amends the assessment system applicable to large IDIs<sup>12</sup> by using scorecards designed to assess the risk that a large IDI poses to the DIF by measuring its financial performance and its ability to withstand stress and the relative magnitude of potential losses to the FDIC in the event of a large institutional failure. The scorecard combines CAMELS ratings and certain

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<sup>12</sup> A large IDI is generally defined as an IDI with at least \$10 billion in assets.

- financial measures into two scorecards—one for most large IDIs and another for highly complex IDIs. Commenters questioned the structure and the complexity of the large bank assessment system. FDIC also received and considered a number of comments related to scorecard measures and assumptions.
- FDIC retains the ability to adjust the scorecard results for large and highly complex institutions based on significant risk factors not captured in the scorecards. Commenters questioned the scale and the need for this adjustment.
  - PRA: FDIC did not conduct a PRA analysis because no collection of information is required for this rule.
  - RFA: FDIC determined that the rule would not be subject to the RFA requirements under the exclusion for rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures. FDIC noted that the final rule relates to the rates imposed on insured depository institutions for deposit insurance, to the risk-based assessment system components that measure risk and weigh risk in determining an insured depository institution's assessment rate and to the assessment base on which rates are charged and concluded that a regulatory flexibility analysis is not required. However, FDIC still conducted an analysis and concluded that the new assessment base and rates would reduce the quarterly assessment on 99 percent of small institutions by an average of \$10,320 and would reduce the percentage of assessments borne by small institutions.
  - Benefit-cost analysis:

	Were the benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
<b>Benefits</b>				
Prevent the DIF from becoming negative during a future crisis of a similar magnitude of the 2007-2009 financial crisis.	No	N/A	None	Yes
Reduce procyclicality in the existing risk-based assessment rates.	No	N/A	None	Yes
<b>Costs</b>				
Initial cost for large institutions to transition their systems in order to report the information necessary.	No	N/A	None	Yes

	Were the benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
Initial transaction cost to all IDIs to calculate new assessment base.	No	N/A	None	Yes

N/A = not applicable.  
Source: GAO.

## Public Comments:

- Number of days to comment: 47
- Number of comments received: 55
- Comments regarding regulatory analysis:
  - Several commentators questioned the validity of the statistical analysis of the rule because it was calibrated using data on small bank failures and would reflect the risks or behaviors of large institutions. FDIC responded that it did not use small bank data, but used statistical techniques to acquire data from large institutions.
  - One commentator expressed concern that the analysis focused on historical information, and may not be relevant to future events. In response, FDIC recognized that any statistical analysis is backward-looking but that historical data provides the best means for analyzing future risk.
  - A few commentators suggested errors in FDIC's analysis. FDIC stated that their analysis has proven accurate in predicting failures from 2006 through 2009.

## Identifying Information

- Agency: FDIC
- Date of proposed rules: October 27, 2010; November 24, 2010
- Effective date: April 1, 2011
- Date of final rule: February 25, 2011
- Federal Register citation: 76 Fed. Reg. 10672

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## Shareholder Approval of Executive Compensation and Golden Parachute Compensation

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### Rule Synopsis

Section 951 of the Dodd-Frank Act amends the Securities Exchange Act of 1934, requiring publicly traded companies to conduct a separate shareholder advisory vote on compensation for executives at least every three years and a vote on the frequency of these votes at least every six years. The amendment also requires a shareholder advisory vote on whether to approve certain so-called “golden parachute” compensation arrangements in connection with a business combination.<sup>13</sup> Section 951 provides that SEC may exempt an issuer from the advisory voting requirements. In determining whether to make an exemption, SEC is to take into account, among other considerations, whether the requirements disproportionately burden small issuers. The rule requires a separate shareholder vote on compensation of executives and a vote on the frequency of these votes for the first annual or other meeting of shareholders occurring on or after January 21, 2011.

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### Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: The proposed and final rules do not state the problem being addressed beyond stating that the rule is designed to implement the requirements of Section 951 of the Dodd-Frank Act.
- Consideration of alternatives reflecting the range of statutory discretion:
  - The rule does not provide any specific language or resolution format for the advisory vote on executive compensation, but the

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<sup>13</sup> Section 951 requires disclosure of any agreements or understandings with named executive officers of the acquiring issuer concerning any type of compensation that is based on or relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may have been paid or become payable to or on behalf of such executive officer.

rules provide that the proposal must include language indicating that the vote is on compensation paid to named executive officers and include a non-exclusive example of a resolution that satisfies the requirements.

- Companies may solicit shareholder votes on a range of compensation matters to obtain specific feedback on the company's compensation policies and programs.
- Results of the advisory votes on executive compensation and the vote frequency must be disclosed within four business days after the meeting at which the vote is held.
- The rule clarifies that the advisory vote on executive compensation is required only at shareholders meetings at which proxies will be solicited for the election of directors, or a special meeting in lieu of such meeting, and the vote is required not less frequently than every 3 calendar years. The vote on frequency is required not less than every 6 calendar years.
- SEC determined not to exempt smaller reporting companies from the advisory votes, but companies with a public float of less than \$75 million are not required to comply with the advisory votes on executive compensation or frequency of such votes until January 21, 2013. The exemption does not apply to the rules applicable to golden parachute packages.
- Companies must disclose decisions regarding how frequently they will conduct the executive compensation advisory votes in light of the results of the vote on frequency.
- Companies must disclose whether and, if so, how they have considered the most recent vote and how that consideration has affected their executive compensation policies and decisions.
- The rule generally requires disclosure of executive officers' golden parachute arrangements in proxy or consent solicitations seeking shareholder approval in connection with an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all of the assets. Golden parachute arrangements between the acquiring company and the named executive officers of the target company are not required to be subject to a vote.
- Disclosure of golden parachute arrangements related to the transaction must be in both tabular and narrative format. The regulation specified the content of the disclosures, including identification of types of compensation and that disclosure is required only for amounts payable in connection with the transaction subject to shareholder approval.
- The rule requires disclosure of golden parachute compensation in connection with certain going-private transactions, tender offers and certain other transactions.

- The rule requires issuers to conduct a separate shareholder advisory vote on golden parachute compensation required to be disclosed in connection with mergers and similar transactions. Issuers will not be required to include in the merger proxy a separate shareholder vote if the compensation has previously been included in the company's disclosures that were subject to a prior advisory vote.
- A shareholder vote to approve executive compensation for companies that received financial assistance under the Troubled Asset Relief Program satisfies the requirement to conduct a shareholder advisory vote on executive compensation.
- PRA: SEC determined that this final rule contains information collection requirements within the meaning of the act, which it submitted to OMB. The title for the collection of information is: "Form 8-K," "Form 10," "Regulation 14A and Schedule 14A," "Regulation 14C and Schedule 14C," "Reg. S-K," "Form S-1," "Form S-4," "Form S-11," "Schedule TO," "Form F-4," "Schedule 14D-9," "Schedule 13E-3," and "Form N-2." The new rules will increase existing disclosure burdens for proxy statements, registration statements, solicitation/recommendation statements, and going-private schedules. The new rules also will increase disclosure burdens for current reports on Form 8-K. SEC estimates the total internal burden hours associated with reporting required for the executive compensation advisory vote, and the vote for the frequency of executive compensation votes will be 20,713 and the total external costs will be \$2,766,800. SEC estimates that the internal hours required to report on advisory votes for "golden parachute" compensation is estimated at 4,229 and total external costs will be \$5,074,400.
- RFA: SEC decided to provide a 2-year exemption period for smaller reporting companies, generally defined as issuers with public float of less than \$75 million. This exemption does not apply to "golden parachute" advisory votes. SEC determined that the rule would affect some companies that are small entities.
- Benefit-cost analysis:

	Were the benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
<b>Benefits</b>				
Provide timely information to shareholders about issuer's plans for future shareholder advisory votes.	No	N/A	None	Yes

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Were the benefits or costs monetized?</b>	<b>Estimated impacts (in millions)</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Qualitative description of the benefits or costs?</b>
Provide potentially useful information for voting and investment decisions.	No	N/A	None	Yes
Reduces confusion and burden for issuers with outstanding TARP indebtedness by specifying that two separate annual shareholder votes are not required.	No	N/A	None	Yes
Benefit smaller reporting companies by providing them a 2-year delayed compliance date.	No	N/A	None	Yes
Reduce confusion among shareholders and issuers regarding advisory votes and preserve the ability of shareholders to make proposals on executive compensation.	No	N/A	None	Yes
Provide more detailed, useful and comprehensive information to shareholders regarding golden parachute compensation.	No	N/A	None	Yes
Disclosure of golden parachute compensation will allow timely and more accurate assessment of the combination transaction and evaluation of the compensation.	No	N/A	None	Yes
Eliminate uncertainty among issuers and other market participants regarding what is necessary to under the SEC proxy rules when conducting a required shareholder vote.	No	N/A	None	Yes
<b>Costs</b>				
Reporting costs of new disclosure requirements.	Yes	\$7.8 and 24,942 hours of company personnel time	NA	Yes
Increased costs of mergers.	No	N/A	None	Yes
Indirect costs related to obtaining compensation information.	No	N/A	None	Yes
Possible increased costs for companies in connection with going-private transactions or as targets in third-party tender offers.				
Additional costs for private companies to takeover public companies.	No	N/A	None	Yes
Increased cost associated with drafting disclosure of results of shareholder votes and any effect on compensation policies.	No	N/A	None	Yes
Certain additional costs imposed on shareholders.	No	N/A	None	Yes

N/A = not applicable.  
Source: GAO.

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- Burden on Competition and Promotion of Efficiency, Competition, and Capital: According to SEC, the increased transparency will allow investors to make informed voting and investment decisions, leading to increased efficiency and competitiveness in U.S. capital markets. SEC states that the reporting rules will be applied consistently across different types of transactions, thus ensuring competition.

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#### Public Comments<sup>14</sup>

- Number of days to comment: 31
- Number of comments received: 66
- Comments regarding regulatory analysis:
  - One commenter argued that SEC left out potential costs associated with the rule, specifically costs associated with proxy advisory firms, the potential for companies to retain additional consulting services relating to their compensation decisions and say-on-pay votes, additional costs associated with submitting no-action letter requests under Rule 14a–8, and increased costs due to increased demand for proxy solicitation and other shareholder communications services. SEC decided these additional costs will not arise as a result of the rule, but instead as a result of requirements under new Section 14A of the Exchange Act.

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#### Identifying Information

- Agency: SEC
- Date of proposed rule: October 28, 2010
- Date of final rule: February 2, 2011
- Effective date: April 4, 2011
- Federal Register citation: 76 Fed. Reg. 6010

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## Retail Foreign Exchange Transactions

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#### Rule Synopsis

The final rule imposes requirements for foreign currency futures, options on futures, and options that an insured depository institution supervised

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<sup>14</sup> In addition to the comment period for this particular rule, to facilitate public input on the Dodd-Frank Act, SEC provided on its Web site a series of e-mail links, organized by topic, that allowed for the submission of comments.

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by FDIC engages in with retail customers.<sup>15</sup> The final rule also imposes requirements on other foreign currency transactions that are functionally or economically similar, including so-called “rolling spot” transactions that an individual enters into with insured depository institution, usually through the Internet or other electronic platform, to transact in foreign currency. The regulations do not apply to traditional foreign currency forwards, spots, or swap transactions that an insured depository institution engages in with business customers to hedge foreign exchange risk. Institutions must seek approval before engaging in a retail forex business by providing FDIC with written notice and obtaining FDIC’s written consent. The institution must comply with capital and operational standards and have in place policies and procedures to prevent unfair trade practices and ensure fair settlement practices. FDIC’s rule is modeled on CFTC’s similar rule for retail foreign exchange transactions and is substantially similar to retail forex rules adopted by OCC and proposed by the Federal Reserve.

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## Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: As amended by the Dodd-Frank Act, the Commodity Exchange Act provides that a U.S. financial institution for which there is a federal regulator shall not enter into, or offer to enter into, a retail foreign exchange (forex) transaction except pursuant to a rule or regulation of a federal regulatory agency allowing the transaction under such terms and conditions as the federal regulatory agency shall prescribe (a “retail forex rule”). The rule details the appropriate requirements with regards to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation.
- Consideration of reasonable alternatives reflecting the range of statutory discretion:
  - FDIC determined that the Interagency Statement on Retail Sales of Nondeposit Investment Products should apply to retail forex transactions.
  - FDIC determined that the rule should not apply to a FDIC-supervised insured depository institution’s foreign branches conducting retail forex transactions abroad with a non-U.S.

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<sup>15</sup> Generally, retail customers are customers that do not qualify as eligible contract participants under the Commodity Exchange Act. Individuals with less than \$10 million in total assets, or less than \$5 million in total assets if entering into the transaction to manage risk, would be considered retail customers.

customer. Commenters had expressed concerns that such transactions are subject to foreign regulatory requirements that could be inconsistent with the retail forex rule.

- FDIC determined that the definition of “retail forex transaction” included leveraged, margined, or bank-financed rolling spot forex transactions. However, retail forex transactions do not include leveraged, margined, or bank-financed forex forwards that create an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.
- The final rule excludes identified banking products from the definition of “retail forex transaction.”
- FDIC determined that a customer should be able to offset retail forex transactions in a particular manner, if he or she so chooses, default offset rules notwithstanding.
- FDIC determined that the risk disclosure statement provided to retail forex customers should disclose the percentage of retail forex accounts that earned a profit and the percentage that earned a loss. Additionally, the rule requires a disclosure that when a retail customer loses money trading, the FDIC-supervised institution makes money.
- FDIC determined that the retail forex disclosure should not be combined with other disclosures made by FDIC supervised insured depository institutions and that a separate risk disclosure document is required. FDIC considered a number of issues concerning the scope and nature of disclosures required and permitted.
- FDIC permitted the use of recorded oral phone retail forex transaction orders in certain circumstances for recordkeeping purposes.
- The final rules require an institution to collect margin when entering into a retail forex transaction. FDIC considered various aspects of margin requirements imposed on retail forex customers, including collection times in response to margin calls. Additionally, FDIC permits margin collected from retail forex customers to be placed into an omnibus or commingled account if the bank keeps records of each retail forex customer’s margin balance.
- FDIC-supervised institutions may not enter into a retail forex transaction to be executed at a price that is not at or near prices at which other customers have executed materially similar transactions. Additionally, institutions may not change prices after order confirmation or provide a retail forex customer with a new

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- bid price that is higher (or lower) than previously provided with providing a new ask price that is similarly higher (or lower) as well.
- Institutions must mark the customer's open retail forex positions and the value of the customer's margin account to market daily.
  - FDIC determined that customers must receive a monthly account statement and the statement may be provided electronically.
  - FDIC determined that an institution must obtain a specific authorization from customer before a effecting retail forex transaction.
  - Institutions must establish reasonable policies and procedures to address front running.
  - An FDIC-supervised insured depository institution must disclose that retail forex transactions are not FDIC-insured.
  - PRA: FDIC determined that this final rule contains information collection requirements within the meaning of the act, and therefore FDIC submitted the rule to OMB for review. FDIC estimated that the total estimated annual burden for regulated entities subject to the regulation would be approximately 6,038 hours. FDIC determined that the rule imposed filing requirements, disclosure requirements, and recordkeeping requirements.
  - RFA: FDIC estimated that no small banks under its supervision would be affected by the rule.
  - Benefit-cost analysis: None

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Public Comments:

- Number of days to comment: 30
- Number of comments received: 6
- Comments regarding regulatory analysis: None

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Identifying Information

- Agency: FDIC
- Date of proposed rule: May 17, 2011
- Date of final rule: July 12, 2011
- Effective date: July 15, 2011
- Federal Register citation: 76 Fed. Reg. 40779

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## Retail Foreign Exchange Transactions

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### Rule Synopsis

This rule authorizes national banks, federal branches and agencies of foreign banks, and their operating subsidiaries to engage in off-exchange transactions in foreign currency with retail customers. The rule also describes various requirements with which national banks, federal branches and agencies of foreign banks, and their operating subsidiaries must comply to conduct such transactions. The rule is modeled on CFTC's similar rule for retail foreign exchange transactions and is similar to FDIC's rule.

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### Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: The Dodd-Frank Act provided that a U.S. financial institution for which there is a federal financial regulator shall not enter into an off-exchange foreign exchange transaction with a retail customer except pursuant to a rule or regulation of a relevant federal regulatory agency allowing the transaction. This rule details the appropriate requirements with regards to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements that the Office of the Comptroller of the Currency (OCC) determined were necessary to protect retail customers from fraudulent practices.
- Consideration of alternatives reflecting the range of statutory discretion:
  - Nature of disclosure, recordkeeping, capital and margin reporting, business conduct, and documentation requirements
  - OCC determined that the Interagency Statement on Retail Sales of Nondeposit Investment Products applied to retail forex transactions.
  - OCC determined that the retail forex rule should not apply to national banks' foreign branches conducting retail forex transactions abroad because they are subject to any applicable disclosure, recordkeeping, capital, margin, reporting, and other requirements of applicable foreign law.
  - OCC determined that leveraged, margined, or bank-financed forex forwards (including rolling spot forex transactions) should be regulated as retail forex transactions and included a provision in the final rule that allows OCC to exempt specific transactions or kinds of transactions from the definition of "retail forex transaction."

- A leveraged, margined or bank-financed forex forward is a retail forex transaction unless it creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.
- OCC determined that a national bank is required to close out offsetting long and short positions in a retail forex account, but that a customer should be able to offset retail forex transaction in a particular manner, if he or she so chooses.
- Identified banking products are excluded from the definition of “retail forex transaction.”
- OCC required disclosure of the percentage of profitable retail forex accounts and requires that the risk disclosure statement include a disclosure that when a retail customer loses money trading, the dealer makes money.
- OCC considered comments on required margin and permitted a national bank to place margin collected from retail forex customers into an omnibus or commingled account and required that the margin account be marked to market daily.
- OCC agreed with a commenter that monthly statements may be provide electronically.
- OCC agreed with a commenter and allowed customer authorization to effect a particular trade to be provided in writing or orally.
- National banks must establish reasonable policies, procedures, and controls to address front running. Effective firewalls and information barriers are reasonable policies, procedures, and controls.
- OCC determined that rather than allow requoting a national bank may reject orders and request that a customer submit a new order.
- PRA: OCC determined that this final rule contains information collection requirements within the meaning of the act, and therefore submitted the rule to OMB for review. The requirements are broken down into information collection requirements in Sections 48.4-48.7, 48.9-48.10, 48.13, and 48.15-48.16, reporting requirements under Section 48.4, disclosure requirements under Sections 48.5, 48.6, 48.10, 48.13(b), 48.13(c), 48.13(d), 48.15, and 48.16, and recordkeeping requirements under Sections 48.7, 48.13(a), and 48.9. OCC estimated the total reporting burden of the rule to be 672 hours, the total disclosure burden to be 54,166 hours, the total recordkeeping burden to be 12,416 hours, and the total annual burden to be 67,254 hours.

**Appendix IV: Case Studies of 10 Selected Rules**

- RFA: OCC determined that the regulation would not have a significant impact on a substantial number of small entities. Therefore, a RFA was not required and not completed.
- Benefit-cost analysis:

	Were the benefits or costs monetized?	Estimated impacts (in millions)	Reasons cited for not monetizing benefits or costs	Qualitative description of the benefits or costs?
<b>Benefits</b>				
None listed.	No	N/A	None	No
<b>Costs</b>				
Provide the OCC with prior notice and obtain a written no-objection letter.	Yes	\$36.55 total for listed costs	N/A	No
Modify retail forex agreements to include the required customer dispute disclosure.	Yes	"	N/A	No
Modify systems to enable the bank to disclose the ratio of profitable accounts.	Yes	"	N/A	No
Establish or modify policies and procedures for customer due diligence and recordkeeping.	Yes	"	N/A	No
Modify systems to comply with the recordkeeping requirements in §48.7.	Yes	"	N/A	No
Modify account statements to comply with the customer reporting requirements in §48.10.	Yes	"	N/A	No
Provide the required risk disclosures.	Yes	"	N/A	No
Establish and implement internal rules, procedures, and controls to comply with trading and operational standards in §48.13.	Yes	"	N/A	No
Modify systems to comply with trading and operational standards.	Yes	"	N/A	No
Establish or modify systems and policies and procedures to comply with the margin requirements in §48.9.	Yes	"	N/A	No
Obtain specific authorization to trade.	Yes	"	N/A	No

N/A = not applicable.

Source: GAO.

- Unfunded Mandates Reform Act of 1995: OCC determined that the rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any 1 year. Accordingly, the rule is not subject to Section 202 of the Unfunded Mandates Act.
- Congressional Review Act (CRA): OCC determined that the regulation did not and was not likely to result in a \$100 million or more annual economic effect and, therefore, was not a "major rule" under the CRA.

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Public Comments:	<ul style="list-style-type: none"><li>• Number of days to comment: 31</li><li>• Number of comments received: 3</li><li>• No comments were made regarding regulatory analysis</li></ul>
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Identifying Information	<ul style="list-style-type: none"><li>• Agency: OCC</li><li>• Date of proposed rule: April 22, 2011</li><li>• Date of final rule: July 14, 2011</li><li>• Effective date: July 15, 2011</li><li>• Federal Register citation: 76 Fed. Reg. 41375</li></ul>
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## Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers

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Rule Synopsis	<p>Prior to enactment of the Dodd-Frank Act, many investment advisers relied on an exemption to registration under the Advisers Act for “private advisers” who had fewer than 15 clients and met other criteria. The Dodd-Frank Act eliminated this exemption, which will result in additional investment advisers registering with SEC. The repeal of the exemption was primarily designed to require advisers to “private funds” to register with SEC. Private funds include hedge funds, private equity funds and certain other types of privately offered pooled investment vehicles that are excluded from the definition of “investment company” under the Investment Company Act of 1940.</p> <p>The Dodd-Frank Act provides a registration exemption for an investment adviser that solely advises “venture capital funds” and directs SEC to define “venture capital fund.” Additionally, the Dodd-Frank Act directs SEC to provide an exemption from registration for any investment adviser that solely advises private funds if the adviser has assets under management in the United States of less than \$150 million. The Dodd-</p>
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Frank Act requires that SEC require advisers relying on these two exemptions to maintain records and make reports “as the Commission determines necessary or appropriate in the public interest or for the protection of investors.”<sup>16</sup> SEC adopted reporting requirements for advisers relying on these exemptions in a separate rulemaking.

The Dodd-Frank Act also provides an exemption for foreign private advisers, which are defined in the Advisers Act as investment advisers that, among other things, have no place of business in the United States, have fewer than 15 clients in the United States and investors in the United States in private funds advised by the adviser, and have less than \$25 million in aggregate assets under management from such clients and investors.

SEC adopted three rules to address the exemptions. The first rule implements the venture capital exemption by defining a venture capital fund generally as a private fund that: (1) holds no more than 20 percent of the fund’s capital commitments in non-qualifying investments (other than short-term holdings);<sup>17</sup> (2) with limited exceptions does not borrow or otherwise incur leverage except on a short-term basis; (3) generally does not offer its investors redemption or other similar liquidity rights; (4) represents itself as pursuing a venture capital strategy to investors; and (5) is not registered under the Investment Company Act. Pre-existing funds can also rely on the grandfathering provision if they represent themselves as pursuing a venture capital strategy and have issued all fund interests by July 21, 2011.

The second rule provides the exemption for advisers that solely advise private funds and have assets under management in the United States of less than \$150 million. Under the rule, this exemption applies to U.S. advisers with less than \$150 million in total assets under management in “private funds,” so long as all of the adviser’s clients, U.S. or non-U.S., are private funds. An adviser with a place of business outside of the U.S. will qualify for the exemption if all of its U.S. clients are private funds, and the assets the adviser manages at any U.S. place of business are solely private fund assets with a total value of less than \$150 million. Both U.S.

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<sup>16</sup> See sections 407 and 408 of the Dodd-Frank Act.

<sup>17</sup> “Qualifying investments” are generally directly acquired equity securities of “qualifying portfolio companies.”

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and non-U.S. advisers must calculate the value of their assets under management according to instructions in Form ADV, as revised in a separate rulemaking.

Finally, the third rule implements the foreign private adviser exemption by defining terms used in the new statutory exemption and otherwise clarifying its operation.

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## Key Aspects of Regulatory Analyses

- Identified problem to be addressed by regulation: Adopting rules to implement the three new exemptions from registration under the Advisers Act. Providing rules, definitions, and clarifications for new exemptions enacted under the Dodd-Frank Act.
- Consideration of alternatives reflecting the range of statutory discretion:
  - Definition of Venture Capital Fund
    - SEC's definition of venture capital fund was designed to distinguish venture capital funds from other types of private funds, such as hedge funds, private equity funds, and to address concerns expressed by Congress regarding the potential for system risk. SEC did not define a venture capital fund by reference to investments in small businesses or companies or by reference to the California definition of "venture capital fund," as some commenters suggested, but did adopt an approach suggested by several other commenters that defines a venture capital fund to include a fund that invests a portion of its capital commitments in investments that would not otherwise meet the requirements of the rule. SEC capped the amount of nonconforming investments at 20 percent of the fund's capital commitments, after considering this and other amounts suggested by commenters. This change from the proposal provides venture capital funds greater investment flexibility.
    - SEC defined a venture capital fund as a private fund that generally holds equity securities of qualifying portfolio companies that are directly acquired by the private fund. SEC also allowed acquisition of equity securities that are (i) issued in exchange for directly acquired equity securities or (ii) issued by companies that own or merge with qualifying portfolio companies.
    - SEC considered the definition of qualifying portfolio company, leverage limitations applicable to venture capital funds, and

whether venture capital funds can issue securities that provide investors with withdrawal or redemption rights.

- SEC considered comments concerning the scope of permissible short-term holdings and ultimately determined to include money market fund shares in this category.
  - SEC considered comments and ultimately determined not to adopt a proposed managerial assistance requirement.
  - SEC considered comments and determined that a venture capital fund must represent that it pursues a venture capital strategy, but need not necessarily call itself a “venture capital fund.”
  - SEC grandfathered advisers to existing private funds that do not meet all of the requirements but represented to investors at the time the fund issued its shares that it pursued a venture capital strategy, among other requirements.
- **Exemption for Investment Advisers Solely to Private Funds with Less Than \$150 Million in Assets under Management**
    - The Dodd-Frank Act specifies that SEC is to exempt from registration under the Advisers Act any investment adviser solely to private funds having less than \$150 million in assets under management in the United States. SEC determined that an adviser based in the United States must aggregate the value of all assets of private funds it manages to determine if the adviser is below the \$150 million threshold.
    - SEC determined to require advisers to calculate their private fund assets using a new method for calculating regulatory assets under management that was adopted in a separate rulemaking. This method requires advisers to use fair value but does not specify a particular fair value standard to mitigate costs associated with the requirement.
    - SEC originally proposed to require advisers relying on the exemption to calculate their private fund assets each quarter to determine if they remain eligible. Commenters persuaded SEC that requiring advisers to calculate private fund assets annually would be more appropriate because it would result in the same number of advisers becoming registered each year while reducing costs.
    - If a non-U.S. adviser relying on the exemption has a place of business in the United States, all of the clients whose assets are managed at that place of business must be private funds and the assets must have a total value of less than \$150 million. A non-U.S. adviser may not rely on the exemption if it has any client that is a U.S. person other than a private fund.

- SEC incorporated the definition of a U.S. person in Regulation S under the Securities Act.
- Whether a non-U.S. adviser has a place of business in the United States depends on the facts and circumstances. Whether the exemption is available, however, frequently will turn on whether the non-U.S. adviser manages assets at a U.S. place of business, rather than whether an adviser has such an office in the first instance.
  - SEC defined the term “qualifying private fund” to permit advisers to rely on the exemption if their funds qualified for an Investment Company Act exclusion in addition to those provided by section 3(c)(1) or 3(c)(7) of that act.
  - Foreign Private Advisers
    - SEC defined certain terms for use by advisers seeking to avail themselves of the foreign private adviser exemption, including “investor,” “in the United States,” “place of business,” and “assets under management.” SEC generally defined these terms by reference to existing definitions and concepts that should be familiar to non-U.S. advisers.
  - PRA: The rules do not contain a collection of information requirement and thus no PRA analysis was required.
  - RFA: SEC certified in the proposing release that the regulation would not have a significant impact on a substantial number of small entities. SEC requested written comment regarding the certification, but no commenter responded to the request.
  - Benefit-cost analysis:
    - SEC noted that as a result of the Dodd-Frank Act’s repeal of the private adviser exemption advisers that previously were able to rely on that exemption will have to register under the Advisers Act unless they are eligible for an exemption. SEC further notes that the benefits and costs associated with registration for advisers that are not eligible for an exemption are attributable to the Dodd-Frank Act. Similarly, the benefits and costs of being an exempt reporting adviser, relative to being a registered adviser or an exempt adviser, are specifically attributable to the Dodd-Frank Act. SEC discusses the benefits and costs of its rules to implement the three exemptions under the Advisers Act.

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Benefits or costs monetized?</b>	<b>Estimated impacts</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Qualitative description of the benefits or costs?</b>
<b>Definition of Venture Capital Fund</b>				
<b>Benefits</b>				
Modifications to final rule better describe the existing venture capital industry.	No	N/A	None	Yes
Greater flexibility to the venture capital industry to accommodate current and future business practices and investment opportunities.	No	N/A	None	Yes
Criteria under final venture capital rule facilitate transition to new exemption by minimizing the need to alter existing business practices.	No	N/A	None	Yes
Allowing qualifying funds limited investments in non-qualifying investments could facilitate access to capital and flexibility to structure investments.	No	N/A	None	Yes
Final rule definition permitting non-qualifying investments has several benefits, including predictability, ease of compliance.	No	N/A	None	Yes
Definition of qualifying investment allows venture capital funds to participate in reorganization of capital structure of portfolio company, provides opportunity to take profits from investments.	No	N/A	None	Yes
Final rule provision that allows a venture capital fund adviser to treat as a private fund a non-U.S. fund managed by the adviser facilitates capital formation and competition.	No	N/A	None	Yes
Exclusion of guarantees of portfolio company indebtedness from the 120-day limit facilitates portfolio company ability to obtain credit.	No	N/A	None	Yes
Restricts a portfolio company's ability to incur debt that may implicate Congressional concerns regarding the use of leverage and distinguishes exempt venture capital funds from non-exempt leveraged buyout equity funds.	No	N/A	None	Yes
Final rule contains several characteristics that provide additional flexibility to venture capital advisers and their funds, including grandfathering provision.	No	N/A	None	Yes
To the extent that additional advisers are required to register this may facilitate SEC's mandate to protect investors and benefits investing public.	No	N/A	None	Yes
<b>Costs</b>				
Confirmation of grandfathered status.	Yes	\$800 per adviser x 791 advisers	N/A	Yes

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Benefits or costs monetized?</b>	<b>Estimated impacts</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Qualitative description of the benefits or costs?</b>
Cost of registration with SEC if exemption unavailable.	Yes	\$15,077 to \$20,077 per adviser	N/A	Yes
New registrant establishing compliance infrastructure (one-time cost) if required to register with SEC.	Yes	\$10,000 to \$45,000 per adviser	N/A	Yes
Annual ongoing compliance costs if required to register with SEC.	Yes	\$10,000 to \$50,000 per adviser	N/A	Yes
Costs to determine how to structure new funds and meet elements of SEC definition.	Yes	\$64,400 to \$110,400 industrywide among affected advisers	N/A	Yes
Adviser choice to structure funds to comply with definitions or not to form new funds could result in less competition and capital formation.	No	N/A	None	Yes
<b>Exemption for Investment Advisers Solely to Private Funds with Less than \$150 Million in Assets under Management in the United States</b>				
<b>Benefits</b>				
Permitting advisers to calculate their private fund assets annually, rather than quarterly, and to use the method of calculation required for regulatory purposes generally, reduces burdens on advisers. Annual calculations, together with separate amendments to Form ADV, also provide a transition period for certain advisers that are no longer eligible for the exemption.	No	N/A	None	Yes
Interpretation of "Assets under Management in the United States" will provide flexibility and reduce compliance costs	No	N/A	None	Yes
If interpretation of Assets under Management in the United States increases the number of advisers subject to registration, will benefit investors, and enhance investor protection	No	N/A	None	Yes
Interpretation that non-U.S. adviser may be exempt even if it advises non-U.S. clients that are not private funds will increase the number of non-U.S. advisers eligible for exemption and will encourage participation of non-U.S. advisers in the U.S. market	No	N/A	None	Yes

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Benefits or costs monetized?</b>	<b>Estimated impacts</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Qualitative description of the benefits or costs?</b>
Definition of "United States person" based generally on Regulation S provides a well-developed body of law that appropriately addresses many of the questions that will arise under the new exemption	No	N/A	None	Yes
Definition of "qualifying private fund" permits advisers to additional types of funds to rely on the exemption	No	N/A	None	Yes
<b>Costs</b>				
Non-U.S. adviser internal review cost to determine whether they have assets under management in U.S.	Yes	\$6,730 per adviser	N/A	Yes
Costs to determine whether the exemption is available	Yes	\$800 to \$4,800 per adviser	N/A	Yes
Conforming internal valuation standard to fair value standard	Yes	\$1,320 per adviser	N/A	Yes
Purchasing pricing or valuation services from third party to comply with fair value standard if unable to conform internal valuation standards	Yes	\$250 to \$75,000 per adviser	N/A	Yes
Cost of registration with SEC if exemption unavailable	Yes	\$15,077 to \$20,077 per adviser	N/A	Yes
New registrant establishing compliance infrastructure (one-time cost) if required to register with SEC	Yes	\$10,000 to \$45,000 per adviser	N/A	Yes
Annual ongoing compliance costs if required to register with SEC	Yes	\$10,000 to \$50,000 per adviser	N/A	Yes
<b>Foreign Private Adviser Exemption</b>				
<b>Benefits</b>				
Definition of terms included in the statutory definition of "foreign private adviser" by reference to definitions in other SEC rules limits non-U.S. advisers' need to undertake additional analysis for the purpose of determining availability of the exemption	No	N/A	None	Yes
Modification of existing definitions of certain terms will have the effect of narrowing the scope of the exemption and increase registration which will benefit investors	No	N/A	None	Yes
<b>Costs</b>				
Non-U.S. adviser cost to determine whether eligible for exemption	Yes	\$6,730 per adviser	N/A	Yes

**Appendix IV: Case Studies of 10 Selected Rules**

	<b>Benefits or costs monetized?</b>	<b>Estimated impacts</b>	<b>Reasons cited for not monetizing benefits or costs</b>	<b>Qualitative description of the benefits or costs?</b>
Cost of registration if exemption unavailable.	Yes	\$15,077 per adviser	N/A	Yes
New registrant establishing compliance infrastructure (one-time cost) if required to register with SEC	Yes	\$10,000 to \$45,000 per adviser	N/A	Yes
Annual ongoing compliance costs if required to register with SEC	Yes	\$10,000 to \$50,000 per adviser	N/A	Yes

N/A = not applicable.  
Source: GAO.

**Public comments<sup>18</sup>**

- Number of days to comment: 66
- Number of comments received: 117
- Comments regarding regulatory analysis:
  - SEC's compliance infrastructure and annual compliance cost estimates were too low. SEC acknowledged that the costs of compliance for new registrants can vary widely depending on their size, activities, and the sophistication of their existing infrastructure.
  - SEC did not receive any other comments concerning its specific cost estimates.

**Identifying Information**

- Agency: SEC
- Date of proposed rule: November 19, 2010
- Date of final rule: July 6, 2011
- Effective date: July 21, 2011
- Federal Register citation: 76 Fed. Reg. 39646

<sup>18</sup> In addition to the comment period for this particular rule, to facilitate public input on the Dodd-Frank Act, SEC provided on its Web site a series of e-mail links, organized by topic, that allowed for the submission of comments.

# Appendix V: Comments from the Commodity Futures Trading Commission



**U.S. Commodity Futures Trading Commission**  
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Gary Gensler  
Chairman

(202) 418-5050

October 25, 2011

A. Nicole Clowers  
Director  
Financial Markets and Community Investment  
United States Government Accountability Office  
Washington, DC 20548

Dear Ms. Clowers:

Thank you for the opportunity to review the findings, conclusions, and recommendations of the Government Accountability Office report titled "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination," GAO-12-151. The Commodity Futures Trading Commission (CFTC) is working deliberately, efficiently, and transparently to implement the Dodd-Frank Act.

The CFTC conducts cost-benefit considerations in its rulemakings as prescribed by Congress in Section 15(a) of the Commodity Exchange Act. The statute includes particularized factors to inform cost-benefit considerations that are specific to the markets regulated by the CFTC.

The CFTC's practices are consistent with the principles of the executive order issued by the President on January 18, 2011. The CFTC has a robust process to involve and ensure public participation in the rulemaking process, and consults broadly with other regulators to coordinate, harmonize and simplify regulations.

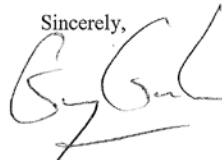
The agency's General Counsel and Chief Economist have provided detailed written guidance to all staff involved in the Dodd-Frank Act rulemaking process. Under that guidance, the Office of the Chief Economist assigns a staff person for each rulemaking team to provide quantitative and qualitative input on costs and benefits of the final rulemaking. The written guidance references OMB Circular A-4 and incorporates the principles of Executive Order 13563 to the extent possible consistent with the underlying statutory mandate.

The CFTC's Dodd-Frank staff rulemaking teams and the Commissioners are all working closely with the SEC and all fellow regulators. CFTC staff have held more than 600 meetings with their counterparts at other agencies and have hosted numerous public roundtables with staff from other regulators to benefit from the open exchange of ideas. Commission staff will continue to engage with colleagues at the SEC and other agencies as during the development and consideration of final rules and ensure harmonization among agencies.

In the Federal Register on Thursday, June 30, 2011, the CFTC announced that, in accordance with Executive Order 13563, it will review existing regulations to evaluate their continued effectiveness in achieving the objectives for which they were adopted.

Again, thank you for the opportunity to comment regarding the draft report.

Sincerely,



Gary Gensler  
Chairman

# Appendix VI: Comments from the Consumer Financial Protection Bureau



1700 Pennsylvania Ave., N.W. Room 4001 L, LBN  
Washington, DC 20548

October 24, 2011

A. Nicole Clowers  
Director, Financial Markets and Community Investments  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Clowers:

Thank you for the opportunity to comment on the GAO draft report entitled *Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination*.

The Consumer Financial Protection Bureau ("CFPB" or "Bureau") welcomes this report as a valuable study of the important roles regulatory analysis and interagency coordination are playing in the development and implementation of the Dodd-Frank Act's reforms. The report documents the challenges and complexity involved in reliably estimating the costs and benefits of regulations to consumers and the financial services industry.

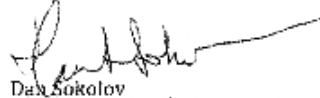
As an agency committed to evidence-based rulemaking, the CFPB recognizes the importance of carefully considering benefits, costs, and impacts throughout the rulemaking process. To that end, we are hiring PhD economists, financial analysts, and industry experts to help the CFPB thoroughly consider these factors and identify and address unwarranted regulatory burden whenever possible.

As a new Federal agency, we expect to follow the spirit of the OMB's guidance on preparing regulatory analyses in a manner consistent with the Dodd-Frank Act, which speaks directly to the consideration of benefits, costs, and impacts. We are also considering the lessons learned from our initial consultations with other agencies and engaging in further dialogue with those agencies as we develop written consultation and coordination guidelines. Finally, we are working to seek public input on performing retrospective analyses of significant regulations over time.

[consumerfinance.gov](http://consumerfinance.gov)

We appreciate the GAO's work on these issues, which we view as central to the CFPB's mission and operations. We look forward to working with you on these matters.

Sincerely,



Dan Sokolov  
Deputy Associate Director  
Research, Markets and Regulations

# Appendix VII: Comments from the Federal Deposit Insurance Corporation



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

General Counsel

October 27, 2011

Ms. A. Nicole Clowers  
Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Clowers:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report titled, *Dodd-Frank Act Regulations: Implementation Could Benefit From Additional Analyses and Coordination* (GAO-12-151) (hereinafter, the "Report"). The Report summarizes GAO's study of certain regulations promulgated under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") by federal financial regulatory agencies, including the FDIC, and makes four recommendations with respect to the agencies' rulemaking processes. We appreciate your review and recommendations. As described further below, we plan to review the FDIC's formal policy statement and regulatory processes to evaluate where we can make improvements in light of GAO's recommendations.

The FDIC's response to each of the Report's recommendations follows. In addition, FDIC staff is separately providing to your staff a few technical comments on the Report.

***GAO RECOMMENDATION:** To strengthen the rigor and transparency of their regulatory analyses, GAO recommends that the federal financial regulators take steps to better ensure that the specific practices in OMB's regulatory analysis guidance are more fully incorporated into their rulemaking policies and consistently applied.*

**FDIC RESPONSE:** The FDIC believes cost-benefit analysis to be an important component of the rule-making process and seeks to undertake such analysis with rigor and transparency. As noted in the Report, in 1998 the FDIC adopted its *Statement of Policy on the Development and Review of FDIC Regulation and Policies* ("Policy Statement") which establishes basic principles that guide the FDIC's development and review of rulemaking. As stated in our Policy Statement, the FDIC "is committed to improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently."<sup>1</sup>

The Report notes that the FDIC and other federal financial regulatory agencies are not subject to Executive Orders ("E.O.") 12866 or 13563, or to OMB Circular A-4 (which provides guidance to covered agencies on regulatory analysis and the way benefits and costs of regulatory actions

<sup>1</sup> FDIC Policy Statement, 63 FR 25157 (May 7, 1998).

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should be measured and reported). Further, in its review of certain Dodd-Frank Act regulations, GAO found that each of the financial regulatory agencies' rulemaking policies provided guidance consistent with the various statutory requirements applicable to the agencies.<sup>2</sup> The GAO Report recommends, however, that the federal financial regulators take steps to better ensure that specific practices in OMB regulatory analysis guidance are more fully incorporated in their rulemaking policies and consistently applied. In this regard, the Report focuses on guidance in OMB Circular A-4, and, in particular, those parts of A-4 regarding monetizing or quantifying costs and benefits as part of a rulemaking, identification of the type and timing of those benefits or costs, expression of the benefits or costs in constant dollars, or an explanation of why these types of cost-benefit analyses cannot be done.

We note that the FDIC faces certain challenges in conducting cost-benefit analyses of its rules. Applicable statutes often limit the FDIC's flexibility and may constrain consideration of alternative approaches. In certain situations, additional cost-benefit analysis may require the FDIC (or other agencies) to seek additional, sometimes proprietary financial data from our regulated institutions, which may increase regulatory burden and delay implementation of statutory requirements. In addition, as the Report states, the difficulty of reliably estimating costs of regulations to the financial services industry and the nation has long been recognized and the benefits of regulation generally are regarded as even more difficult to measure.<sup>3</sup>

In consideration of the Report's recommendation on regulatory analysis and to ensure that we continue to accomplish our regulatory mandates and objectives in the most effective manner possible, the FDIC will review OMB Circular A-4 and revisit its Policy Statement to evaluate how the Policy Statement should be revised to incorporate additional cost-benefit analysis along the lines described in the Report.

***GAO RECOMMENDATION:** To enhance interagency coordination on regulations issued pursuant to Dodd-Frank, GAO recommends that FSOC work with the federal financial regulatory agencies to establish formal coordination policies that clarify issues such as when coordination should occur, the process that will be used to solicit and address comments, and what role FSOC should play in facilitating coordination.*

**FDIC RESPONSE:** The Report states that GAO reviewed certain final rules under the Dodd-Frank Act to assess interagency coordination.<sup>4</sup> In the Report, GAO explains that none of the rules selected were joint rulemakings (in which GAO says coordination is implicit) nor were they rules for which the Dodd-Frank Act specifically requires interagency coordination.

<sup>2</sup> This GAO finding is consistent with a recent review by the FDIC's Office of Inspector General ("OIG") which also reported that the FDIC generally incorporated into its Policy Statement and normal rulemaking analysis the broad principles that guide economic analysis under the above-cited executive orders and Circular A-4. FDIC OIG Report "Evaluation of the FDIC's Economic Analysis of Three Rulemakings to Implement Provisions of the Dodd-Frank Act, EVAL-11-003, (June 2011) at 17-18.

<sup>3</sup> Id. at 17 (citing GAO Report, GAO-08-32).

<sup>4</sup> Id. at 20. Note that not all of the 16 regulatory actions reviewed are final rules, including an FDIC notice issued under the Federal Advisory Committee Act. One of our staff's technical comments being provided to your staff concerns this discrepancy in numbers.

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Based on its own findings about the limitations of the written policies of the various federal financial agencies with respect to interagency coordination on rulemaking, and on industry and academic suggestions, the GAO Report recommends that FSOC work with the agencies to establish formal coordination policies and clarify the coordination process, including what role FSOC should play.

The FDIC agrees that additional interagency coordination for Dodd-Frank Act rulemakings may be appropriate and useful even when coordination is not statutorily required. The FDIC looks forward to working with the FSOC member agencies to explore additional steps that may be taken consistent with this recommendation.

*GAO RECOMMENDATION: To maximize the usefulness of the required retrospective reviews, we recommend that the federal financial regulatory agencies develop plans that determine how they will measure the impact of Dodd-Frank Act regulations – for example, determining how and when to collect, analyze, and report needed data.*

FDIC RESPONSE: The Report points out that the federal financial regulators are required to conduct retroactive reviews of their existing rules under various statutes, which will include Dodd-Frank Act rules in their future reviews. In particular, the Report discusses the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), which requires the FDIC and other Federal Financial Institutions Examination Council member agencies to review their rules at least every ten years to identify outdated, unnecessary or unduly burdensome regulatory requirements. The next EGRPRA review must be completed by 2016. This EGRPRA review will require the FDIC to evaluate the impact of Dodd-Frank Act rules, which are as yet at an early stage, as noted to GAO by the regulatory agencies and industry representatives. In the Report, GAO finds that although federal financial regulators indicated they plan to conduct retrospective reviews of their Dodd-Frank Act rules, most have not developed a plan for such reviews.

In connection with the upcoming EGRPRA review, the FDIC will develop a plan for how to measure the impact of Dodd-Frank Act regulations that we implement, including how and when to collect, analyze, and report needed data.

*GAO RECOMMENDATION: To effectively carry out its statutory responsibilities, we recommend that FSOC direct the Office of Financial Research [“OFR”] to work with its members to identify and collect the data necessary to assess the impact of the Dodd-Frank Act regulations on, among other things, the stability, efficiency, and competitiveness of the U.S. financial markets.*

FDIC RESPONSE: This recommendation is directed at FSOC, and at the OFR, which the Dodd-Frank Act established within the Treasury Department. The FDIC looks forward to working with FSOC and OFR as appropriate in any steps taken to identify data needed to assess the impact of Dodd-Frank Act regulations.

Thank you again for the opportunity to comment on this GAO Report. As discussed above, the FDIC remains committed to appropriate benefit-cost analysis and interagency

- 4 -

coordination in its rulemakings, including those pursuant to the Dodd-Frank Act. If you have any questions or comments concerning this response to the Report, please contact me at (202) 898-8950 or Deputy General Counsel Roberta K. McInerney at (202) 898-3830.

Sincerely,



Michael H. Krimminger  
General Counsel

# Appendix VIII: Comments from the Board of Governors of the Federal Reserve System



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

October 24, 2011

Ms. A. Nicole Clowers  
Director, Financial Markets and Community Investment  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Clowers:

Thank you for the opportunity to comment on your draft report GAO-12-151 regarding Dodd-Frank regulations. As the draft report notes, federal financial regulatory agencies comply with a variety of rulemaking requirements such as the Paperwork Reduction Act and the Regulatory Flexibility Act, and seek to follow the spirit of federal benefit-cost requirements within the context of the unique nature of financial regulatory supervision, though this is not a mandate. Federal financial regulation, above all else, is focused on the safety and soundness of specific financial institutions<sup>1</sup> and therefore, as the report notes, conducting benefit-cost analysis on financial regulations is inherently difficult, and, "the difficulty of reliably estimating the costs of regulations to the financial services industry and the nation has long been recognized, and the benefits of regulation generally are regarded as even more difficult to measure".<sup>2</sup>

The draft report recognizes that federal financial regulators seek to abide by the spirit of OMB benefit-cost guidance. In fact, existing Federal Reserve regulatory policies<sup>3</sup> closely mirror key aspects of Executive Order 13563, issued on January 18, 2011 related to improving regulation and regulatory review. The report further recognizes that the federal financial regulators voluntarily consult with each other about proposed rules to avoid duplication or overlap, even when not required to by law. The report also notes that many of the rules reviewed for this study were set forth by Congress with very little discretion left to the agencies.

The draft report includes two recommendations to the Federal Reserve and other federal financial regulators. The first recommendation is that regulators take steps to ensure that OMB

<sup>1</sup> GAO identifies OMB Circular A-4 as an example of best practices for federal financial agencies to follow but does not discuss the application of Circular A-4 and benefit-cost analysis generally in light of the unique role that federal financial regulators in the area of supervising financial institutions' safety and soundness. (See GAO Report p. 2, 13)

<sup>2</sup> GAO Report, p. 16-17; See also p. 32.

<sup>3</sup> 44 FR 3957 (Jan. 19, 1979).

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Appendix VIII: Comments from the Board of  
Governors of the Federal Reserve System

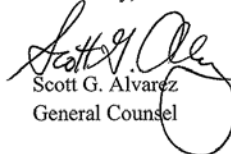
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Ms. A. Nicole Clowers  
Page Two

regulatory analysis is more fully incorporated in rulemaking policies. As summarized in the highlights section, “to the extent that the regulators strive to follow OMB’s guidance, they should take steps to more fully incorporate the guidance” into the rulemaking policies they follow. The second recommendation is that federal regulators plan for ways to measure the impact of Dodd-Frank regulations when sufficient time has passed to allow for such evaluations. As the highlights page summarizes this recommendation, “to maximize the usefulness of these reviews, GAO recommends that the regulators identify what data will be needed to retrospectively assess the impact of the rules in the future.”

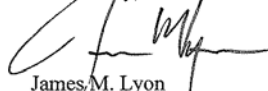
The Federal Reserve will consider appropriate ways to incorporate these recommendations into its rulemaking procedures within the constraints of the specific challenges related to federal financial rulemakings noted by the GAO. The Federal Reserve appreciates the efforts the GAO has taken in this report and for the opportunity to make these comments.

Sincerely,



Scott G. Alvarez  
General Counsel

Sincerely,



James M. Lyon  
Senior Advisor to the Board for  
Regulatory Reform Implementation

# Appendix IX: Comments from the Financial Stability Oversight Council



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

October 28, 2010

A. Nicole Clowers, Director  
Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Clowers:

I am writing in response to your draft report entitled *Dodd-Frank Act Regulations, Implementation Could Benefit from Additional Analyses and Coordination* (the "Draft Report"). We appreciate the opportunity to review and comment on the Draft Report.

The Draft Report contains several recommendations regarding how the Financial Stability Oversight Council ("Council") can further improve interagency communication and coordination, and prepare to assess the impact of Dodd-Frank Act rulemakings. While our financial regulatory system is built on the independence of regulators, and those regulators may have different views on complicated issues, successful implementation of the Dodd-Frank Act rulemakings will require agencies to work together even if coordination is not statutorily required.

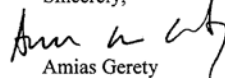
One of the duties of the Council is to facilitate coordination on rulemakings although the Dodd-Frank Act does not provide a mechanism for requiring coordination among independent agencies. The Council is already providing a forum for interagency collaboration and consultation, while preserving the independence of the regulators. In October of 2010, the Council released a road map for implementation of the Dodd-Frank Act. Since then, the Council has worked to facilitate and to improve dialogue among the member agencies on a broad range of topics, including major rulemakings, the collection of useful financial data in conjunction with the Office of Financial Research, and other aspects of the statute. Most importantly, the members of the Council coordinate extensively in their efforts to monitor the financial services marketplace to identify potential threats to the financial stability of the United States. As the Draft Report acknowledges, this has occurred through formal Council meetings, meeting of Council committees, and other discussions. In this manner, the Council has helped to foster shared accountability for the strength of our financial system.

We agree that continuing to improve coordination is critical. The Council's first annual report, including the unanimous recommendations of the member agencies, reflects the high level of coordination within the Council. In fact, members of the Council highlighted the importance of continued domestic and international coordination as a key recommendation in that report. We will carefully consider the GAO's recommendations in the Draft Report as we continue to improve our protocols.

A. Nicole Clowers  
Page 2 of 2

Thank you for the opportunity to review and comment on the Draft Report. We look forward to working with you and your team in the future.

Sincerely,



Amias Gerety  
Deputy Assistant Secretary  
Office of Financial Stability Oversight Council

# Appendix X: Comments from the Office of the Comptroller of the Currency



Comptroller of the Currency  
Administrator of National Banks

Washington, DC 20219

October 24, 2011

Ms. A. Nicole Clowers  
Director, Financial Markets and Community Investment  
United States Government Accountability Office  
Washington, DC 20548

Dear Ms. Clowers:

Thank you for the opportunity to review the draft report titled "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination." Your report responds to an amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that directs the Government Accountability Office (GAO) to analyze (1) the impact of regulations on the financial marketplace; (2) efforts to avoid duplicative or conflicting rulemakings, information requests, and examinations; and (3) other related matters that GAO deems appropriate. GAO has determined that its current and future analyses will be limited to the financial regulations promulgated pursuant to the Dodd-Frank Act, and this draft report focuses exclusively on regulations that were effective as of July 21, 2011.

The draft report finds that the federal financial regulators are taking steps to address the challenges associated with promulgating hundreds of new rules required under the Dodd-Frank Act and makes four recommendations aimed at improving the efficiency and effectiveness of these efforts. This letter provides two comments on those recommendations.

First, the report recommends that the federal financial regulators take steps to better ensure that the specific practices in Office of Management and Budget's (OMB) regulatory analysis guidance are more fully incorporated into their rulemaking policies and are consistently applied. Executive Order 12866 establishes the circumstances under which certain agencies are required to conduct cost-benefit analyses. OMB Circular A-4 prescribes the methodologies that agencies are to use to do so. Some of the agencies charged with rulemaking responsibilities under the Dodd-Frank Act, including the OCC, are not subject to this Executive Order. Nevertheless, the OCC refers to Circular A-4 to analyze costs and benefits under the Unfunded Mandates Reform Act (UMRA) where the impact of a rule exceeds the threshold under the UMRA.<sup>1</sup> The OCC also

<sup>1</sup> If the UMRA threshold is met, an agency must prepare a detailed economic assessment of the rule's anticipated costs and benefits, including: (1) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate; (2) estimates of the future compliance costs and any disproportionate budgetary effects on any regions, governments, communities, or private sector segments; and (3) where relevant, estimates of the national economic effect.

currently is in the process of revising its Guide to OCC Rulemaking Procedures. The revised Guide will contain procedures developed by the OCC's Policy Analysis Division that explicitly reference Circular A-4 for conducting economic analyses. For example, these procedures direct staff to look at suggestions in Circular A-4 for methods of treating non-monetized benefits and costs and suggested alternative regulatory approaches. The revised Guide also will provide more direction to staff on interagency coordination and consultation practices.

Second, the report recommends that the Financial Stability Oversight Council (FSOC) work with the financial regulators to establish formal coordination policies that clarify issues such as when coordination should occur, the process that will be used to solicit and address comments, and what role the FSOC should play in facilitating coordination. As the draft report recognizes (at pp. 21-22), the FSOC member agencies already have adopted consultation protocols that apply when member agencies are required by statute to consult one another in writing regulations implementing the Dodd-Frank Act. Any further efforts to clarify the FSOC's coordination role will require a careful balancing of the benefits of coordinated rulemaking while ensuring that there is no encroachment on the independence of each agency or pursuit of the separate mission that each is statutorily charged to fulfill.

Other consultation protocols also will be important. As the report notes, Title X of the Dodd-Frank Act imposes consultation obligations upon the Consumer Financial Protection Bureau at two stages of the rulemaking process. The OCC has recommended consultation protocols for this process modeled upon the consultation protocols already adopted by the FSOC.

We appreciate the opportunity to comment on the draft report.

Sincerely,



John Walsh  
Acting Comptroller of the Currency

# Appendix XI: Comments from the Securities and Exchange Commission



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

October 24, 2011

A. Nicole Clowers  
Director, Financial Markets and Community Investment  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Clowers:

Thank you for providing us with the opportunity to review and comment on GAO's draft report entitled *Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Cooperation* (GAO-12-151). We appreciate GAO's work on this important matter and the courtesy and consideration you have shown to the SEC staff in conducting this study.

We have transmitted separately a few specific comments on factual portions of the draft report concerning the SEC that we believe should be amended for accuracy. Our views on the broader issues and recommendations discussed in the draft report are described below.

Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") is a major undertaking for the SEC and other government regulatory agencies. The Dodd-Frank Act requires or authorizes federal financial regulatory agencies, including the SEC, to promulgate hundreds of regulations. Of the more than ninety mandatory rulemaking provisions that apply to the SEC, the SEC has proposed or adopted rules for more than three-fourths of them -- not including rules stemming from the dozens of other provisions that give the SEC discretionary rulemaking authority. Additionally, the SEC has finalized twelve of the more than twenty studies and reports that it is required to complete under the Act. We note that of the thirty-two final rulemakings examined by GAO in its draft report, ten were issued by the SEC. While we have achieved a great deal, we are continuing to work diligently to implement all provisions of the Act for which we have responsibility, even as we continue to perform our longstanding core responsibilities.

Of the four recommendations contained in the draft report, two are directed to the regulatory agencies charged with writing rules to implement the Dodd-Frank Act, including the SEC. First, GAO recommends that financial regulators take steps to better ensure that the specific practices in OMB's regulatory analysis guidance are more fully incorporated into their rulemaking policies and are consistently applied. I agree that sound regulatory analysis is an important element of effective rulemaking. We are keenly aware that our rules have both costs and benefits, and that the steps we take to protect the investing public impact both financial markets and industry participants who must comply with our rules. As the GAO draft report acknowledges, however, and as GAO has reported in the past, reliably estimating the costs of

A. Nicole Clowers  
Page 2

regulations to the financial services industry and the nation is extremely difficult, and the benefits of regulation are generally regarded as even more difficult to measure. An additional challenge noted in the draft report is that of obtaining the best economic information available to conduct the regulatory analysis in a timely manner, particularly given the time constraints imposed by the Dodd-Frank Act. We created the Division of Risk, Strategy, and Financial Innovation ("Risk Fin") in September 2009, and one of our primary goals in doing so was to enhance the agency's economic analysis capabilities for our rulemaking. I have recently asked the staff to explore ways to improve the process for integrating economic analysis into the Commission's decision-making throughout the course of a rulemaking. As part of that effort, Risk Fin has been considering best practices for conducting sound economic analysis in rulemaking. Although as an independent regulatory agency we are not obligated to follow the guidelines in OMB Circular A-4, we strive to accomplish what GAO's draft report identifies as the basic elements of a good regulatory analysis under Circular A-4 by explaining the need for the proposed action, carefully examining alternative approaches, and evaluating the costs and benefits of the proposed action and alternatives. As we work towards possible improvements to our processes for conducting economic analysis, we will examine whether there are additional elements that Circular A-4 identifies for achieving these basic objectives that may be appropriate to incorporate into our process.

Second, the draft report recommends that financial regulators develop plans that determine how they will measure the impact of Dodd-Frank Act regulations. As the draft report notes, the SEC has already begun the process of planning for retrospective analysis of our rules. In September 2011, we issued a release seeking public comments to assist the Commission in developing a plan for the retrospective review of existing significant regulations. The public comment period has recently closed, and we are now in the process of considering the comments received as we proceed towards developing a plan.

The GAO draft report also makes two recommendations that are directed primarily at the Financial Stability Oversight Council ("FSOC"). As Chairman of the SEC, I am a voting member of FSOC. Senior SEC staff and I have actively participated in FSOC and found its focus on identifying and addressing risks to the financial system to be important and helpful to the SEC as a capital markets regulator. FSOC also has fostered a healthy and positive sense of collaboration among the financial regulators, facilitating cooperation and coordination for the benefit of investors and our overall financial system. In that spirit, the SEC has closely coordinated with the other regulators on individual rulemakings.

The draft report recommends that FSOC work with the federal financial regulatory agencies to establish formal coordination policies. As the draft report reflects, the agencies developed informal processes to work together: the agencies' senior leadership identified areas where it would be useful for regulators to confer, and the regulators informally consulted and coordinated on a number of rules, even when it may not have been required. Additionally, as the draft report notes, we have entered into a Memorandum of Understanding with the CFTC, the fellow regulator with which we have the greatest number of rulemakings requiring coordination or joint action. While more formal policies regarding the process of collaboration might be helpful, these efforts should of course fully respect the independence of the respective member

A. Nicole Clowers  
Page 3

agencies regarding the substance of the rules for which they are responsible and the mission of FSOC itself. FSOC was not designed as a “super-regulator” but was created to provide a venue and mechanism for identifying and addressing potentially systemic risks that often flow across multiple regulatory regimes.

The draft report also recommends that FSOC direct the Office of Financial Research to work with its members to identify and collect the data necessary to assess the impact of the Dodd-Frank Act regulations. We look forward to working more closely with the Office of Financial Research to obtain more data and analytical support for purposes of evaluating the impact of our Dodd-Frank Act rules.

Thank you once again for the opportunity to review and comment on the draft report. I am committed to improving the Commission’s processes for engaging in rulemaking. GAO’s work on this study will assist us in our continued efforts to improve those processes as we complete the challenging task of fully implementing the Dodd-Frank Act.

Sincerely,



Mary L. Schapiro  
Chairman

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# Appendix XII: GAO Contact and Staff Acknowledgments

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## GAO Contact

A. Nicole Clowers, (202) 512-8678 or [clowersa@gao.gov](mailto:clowersa@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Richard Tsuhara (Assistant Director), Holland Avery, Timothy Bober, Emily Chalmers, William R. Chatlos, Philip Curtin, Rachel DeMarcus, Lawrance Evans, Denise Fantone, Timothy Guinane, Thomas McCool, Jon Menaster, Patricia Moye, Robert Pollard, Jessica Sandler, Andrew Stavisky, and Eva Yikui Su made key contributions to this report.

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Ralph Dawn, Managing Director, [dawnr@gao.gov](mailto:dawnr@gao.gov), (202) 512-4400  
U.S. Government Accountability Office, 441 G Street NW, Room 7125  
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