



United States Government Accountability Office
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June 26, 2012

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury: Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board To Cover the Expenses of the Financial Research Fund*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, entitled "Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board To Cover the Expenses of the Financial Research Fund" (RIN: 1505-AC42). We received the rule on June 12, 2012. It was published in the *Federal Register* as a final rule and interim final rule on May 21, 2012. 77 Fed. Reg. 29,884.

The final rule and interim final rule implement section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directs the Treasury to establish by regulation an assessment schedule for bank holding companies with total consolidated assets of \$50 billion or greater and nonbank financial companies supervised by the Board of Governors of the Federal Reserve (the Board) to collect assessments equal to the total expenses of the Office of Financial Research (OFR). Included in the Office's expenses are expenses of the Financial Stability Oversight Council (FSOC), as provided under section 118 of the Dodd-Frank Act, and certain expenses of the Federal Deposit Insurance Corporation (FDIC), as provided under section 210 of the Dodd-Frank Act. The portion of this rule concerning the assessment schedule for bank holding companies is issued as a

final rule. The portion of this rule related to the assessments for nonbank financial companies supervised by the Board is issued as an interim final rule, to allow for the consideration of additional comments in conjunction with related FSOC rules. This final rule and interim final rule establish the key elements of Treasury's assessment program, which will collect semiannual assessment fees from these companies beginning on July 20, 2012. These rules take into account the comments received on the January 3, 2012, proposed rule and make minor revisions pursuant to the comments.

The effective date for the final rule and interim final rule sections 150.2, 150.3(b), 150.5, and 150.6(a) and (b), which relate to nonbank financial companies, is July 20, 2012. Comments are invited by September 18, 2012, on sections 150.2, 150.3(b)(4), 150.5, and 150.6(a) and (b), which relate to nonbank financial companies.

The final rule has an effective date of July 20, 2012. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on May 21, 2012, but we did not receive the rule until June 12, 2012. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of Treasury's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that Treasury complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen
Senior Counsel for Regulatory Affairs
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY
ENTITLED
"ASSESSMENT OF FEES ON LARGE BANK HOLDING COMPANIES
AND NONBANK FINANCIAL COMPANIES SUPERVISED BY
THE FEDERAL RESERVE BOARD TO COVER THE EXPENSES
OF THE FINANCIAL RESEARCH FUND"
(RIN: 1505-AC42)

(i) Cost-benefit analysis

Treasury states that the assessment and collection of fees described in this rule represent an economic transfer from assessed companies to the government, for purposes of providing the benefits associated with coordinated identification and monitoring of risks to U.S. financial stability, promoting market discipline, and responding to emerging threats to the U.S. financial system. As such, Treasury believes the assessments do not represent an economic cost. However, according to Treasury, the allocation of the assessment may have distributional impacts. Treasury estimates that approximately 50 companies will be determined as eligible for the initial assessment, and in addition the estimated cost for each company of filling out the forms and submitting payment to Treasury will be \$600.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. § 601 et seq., requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. Section 605(b) allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. § 605(b), Treasury hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Treasury states that the size standard for determining whether a bank holding company or a nonbank financial company is small is \$7 million in average annual receipts. Under section 155 of the Dodd-Frank Act, only bank holding companies with more than \$50 billion in total consolidated assets or nonbank financial companies regulated by the Federal Reserve will be subject to assessment. As such, Treasury notes that this rule will not apply to small entities and a regulatory flexibility analysis is not required.

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

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. § 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Treasury believes that its regulatory impact analysis provides the analysis required by the Unfunded Mandates Reform Act.

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

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

The Administrative Procedure Act generally requires public notice and comment procedures before promulgation of regulations. 5 U.S.C. § 553(b). On January 3, 2012, Treasury published a notice of proposed rulemaking requesting comment on the proposed rule. Treasury is finalizing the rule as it relates to bank holding companies without an opportunity for additional comment.

The comments that relate to nonbank financial companies have been considered but have not been fully addressed in this interim rule because Treasury believes the rulemaking would benefit from additional public comment prior to establishing it as a final rule.

Treasury believes, however, that good cause exists under 5 U.S.C. § 553(b) to effectuate the rule as it relates to nonbank financial companies on an interim basis. According to Treasury, nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act are subject to assessments. To date, Treasury notes that no nonbank financial company has been subject to the section 113 supervision. Treasury states that once designated by the FSOC and subject to Board supervision, a nonbank financial company will also be subject to assessments under the Dodd-Frank Act. In order to be consistent with the requirements of section 155 of the Act in assessing designated nonbank financial companies, Treasury finds that it would be impracticable and contrary to the public interest to delay implementation of the rule pending further public comment. Treasury believes that to implement the rule only as it relates to bank holding companies would impose an increased burden on bank holding companies and prevent the collection from designated nonbank financial companies of the assessments required to be imposed by statute. Accordingly, Treasury is effectuating the rule as it relates to nonbank financial companies, but also invites public comment on portions of §§ 150.2, 150.3, 150.4, 150.5, and 150.6 as they relate to nonbank financial companies.

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

Treasury states that the collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act, 44 U.S.C. § 3507(d) and assigned control number 1505–0245.

Treasury states that on a one-time basis assessed entities would be required to set up a bank account for fund transfers and provide the required information to the Treasury Department on a form. Treasury states that the form includes bank account routing information and contact information for the individuals at the company that will be responsible for setting up the account and ensuring that funds are available on the billing date. Treasury estimates that approximately 50 companies may be affected, and that completing and submitting the form would take approximately 15 minutes. According to Treasury, the aggregate paperwork burden is estimated at 12.5 hours.

Treasury also states that on a semi-annual basis, assessed companies will have the opportunity to review the confirmation statement and assessment bill. Treasury believes the rules do not require the companies to conduct the review, but it does permit it. Treasury anticipates that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

Statutory authorization for the rule

Treasury states that the authority for this regulation is section 155(d) of the Dodd-Frank Act.

Executive Order No. 12,866 (Regulatory Planning and Review)

Treasury determined that this regulation is a significant regulatory action as defined in Executive Order 12,866 as supplemented by Executive Order 13,563, in that this rule would have an annual effect on the economy of \$100 million or more. Accordingly, Treasury notes that this rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, Treasury did not include an analysis of the final regulations under the Order.