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December 11, 2015

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

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency: Margin and Capital Requirements for Covered Swap Entities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of the Comptroller of the Currency (OCC); Federal Reserve System (the Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FHA); Federal Housing Finance Agency (FHFA) (collectively, the agencies) entitled "Margin and Capital Requirements for Covered Swap Entities" (RINs: 1557-AD00; 7100-AD74; 3064-AE21; 3052-AC69; 2590-AA45). We received the rule from FHFA on November 18, 2015. It was published in the *Federal Register* as an interim final rule and request for comment on November 30, 2015. 80 Fed. Reg. 74,916. This interim final rule has an effective date of April 1, 2016.

The interim final rule establishes minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants. The rule applies to entities for which one of the agencies is the prudential regulator. This rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015.¹ Sections 731 and 764 require the agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

¹ 7 U.S.C. § 6s; 15 U.S.C. § 78o-8.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Four of the five agencies promulgating this interim final rule and request for comment are independent regulatory agencies, but OCC is not. OCC did not discuss any actions it took under the Unfunded Mandates Act in the interim final rule. Our review of the procedural steps taken indicates that, other than this omission, the agencies 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: Alfred M. Pollard
General Counsel
Federal Housing Finance Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMPTROLLER OF THE CURRENCY;
FEDERAL RESERVE SYSTEM;
FEDERAL DEPOSIT INSURANCE CORPORATION;
FARM CREDIT ADMINISTRATION;
FEDERAL HOUSING FINANCE AGENCY
ENTITLED
“MARGIN AND CAPITAL REQUIREMENTS FOR
COVERED SWAP ENTITIES”
(RINs: 1557-AD00; 7100-AD74; 3064-AE21; 3052-AC69; 2590-AA45)

(i) Cost-benefit analysis

The interim final rule discussed the estimated burden of information collection requirements under the Paperwork Reduction Act as discussed below. The Department of the Treasury, Office of the Comptroller of the Currency (OCC); Federal Reserve System (the Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FHA); Federal Housing Finance Agency (FHFA) (collectively, the agencies) also invited public comment in the interim final rule on estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. In its submission of the interim final rule to us, FHFA indicated that preparation of an analysis of costs and benefits was not applicable.

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

The Board does not believe that the interim final rule would have a significant economic impact on a substantial number of small entities. FDIC certified that the interim final rule does not have a significant impact on a substantial number of small FDIC-supervised institutions. OCC determined that the Act does not apply because no notice of proposed rulemaking was published for the interim final rule. FCA certified that the interim final rule will not have a significant economic impact on a substantial number of small entities as FCA institutions are not small entities as defined by the Act. FHFA certified that the interim final rule will not have a significant impact on a substantial number of small entities since none of FHFA's regulated entities are small as defined in the Act.

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

As independent regulatory agencies, the Board, FDIC, FCA, and FHFA are not subject to the Act. OCC did not discuss the Act in the interim final rule.

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

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

In the interim final rule, the agencies found that prior notice and comment was impractical as they were required by statute to promulgate this rule without regard to the Act's notice and

comment provisions. Pub. L. No. 114-1, § 303, 129 Stat. 3, 28 (2015). The agencies provided an opportunity for comment, closing January 31, 2016.

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

The agencies determined the interim final rule contains information collection requirements under the Act. The Office of Management and Budget (OMB) control numbers for the information collection requirements are 1557-0251 for OCC, 3064-0180 for FDIC, and 7100-0364 for the Board. OCC's and FDIC's requirements have been submitted to OMB for review. The title of the proposed information collection is "Reporting and Recordkeeping Requirements Associated with Margin and Capital Requirements for Covered Swap Entities." The total estimated annual burdens as stated in the interim final rule are 34,780 hours for OCC, 1,739 for FDIC, and 86,964 for the Board. FCA determined the interim final rule does not involve a collection of information pursuant to the Act for FCA institutions because they are federally chartered instrumentalities of the United States which have an exception under the Act. FHFA determined the interim final rule does not contain an information collection requirement for any entity under its regulatory authority.

Statutory authorization for the rule

OCC promulgated the interim final rule under the authority of section 6s(e) of title 7; sections 1 to 16, 93a, 161, 481, 1818, 3907, 3909, and 5412(b)(2)(B) of title 12; and section 78o-10(e) of title 15, United States Code.

The Board promulgated the interim final rule under the authority of section 6s(e) of title 7; sections 221 to 522, 1461 to 1470, 1818, 1841 to 1852, and 3101 to 3111 of title 12; and section 78o-10(e) of title 15, United States Code.

FDIC promulgated this interim final rule under the authority of section 6s(e) of title 7; sections 1813, 1818, 1819, and 3108 of title 12; and section 78o-10(e) of title 15, United States Code.

FCA promulgated the interim final rule under the authority of section 6s(e) of title 7 and section 78o-10(e) of title 15, United States Code, and sections 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act. 12 U.S.C. §§ 2154, 2243, 2252, 2279bb-1.

FHFA promulgated the interim final rule under the authority of section 6s(e) of title 7; sections 4513 and 4526(a) of title 12; and section 78o-10(e) of title 15, United States Code.

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

As independent regulatory agencies, the Board, FDIC, FCA, and FHFA are not subject to the Order. OCC did not address the Order in the interim final rule.