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February 17, 2010

The Honorable Christopher J. Dodd  
Chairman  
The Honorable Richard C. Shelby  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Barney Frank  
Chairman  
The Honorable Spencer Bachus  
Ranking Minority 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; Department of the Treasury, Office of Thrift Supervision: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues*

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 (Board); Federal Deposit Insurance Corporation (FDIC); Department of the Treasury, Office of Thrift Supervision (OTS), (collectively, the agencies): Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Back Commercial Paper Programs; and Other Related Issues” (RINS: 1557-AD26, 3064-AD48, 1550-AC36, Docket No. R-1368). We received the rule on January 13, 2010. It was published in the *Federal Register* as a final rule on January 28, 2010. 75 Fed. Reg. 4636.

The final rule eliminates the exclusion of certain consolidated asset-backed commercial paper (ABCP) programs from risk-weighted assets and provides for an optional two-quarter implementation delay followed by an optional two-quarter partial implementation of the effect on risk-weighted assets that will result from changes to U.S. generally accepted accounting principles (GAAP). Additionally, the

final rule provides for an optional two-quarter delay, followed by an optional two-quarter phase-in, of the application of the agencies' regulatory limit on the inclusion of the allowance for loan and lease losses (ALLL) in tier 2 capital for the portion of the ALLL associated with the assets a banking organization consolidates as a result of changes to U.S. GAAP. The final rule also provides a reservation of authority to permit the agencies to require a banking organization to treat entities that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes, commensurate with the risk relationship of the banking organization to the structure. The delay and subsequent phase-in periods of the implementation will apply only to the agencies' risk-based capital requirements, not the leverage ratio requirement.

This rule is effective March 29, 2010. Banking organizations may elect to comply with this final rule as of the beginning of their first annual reporting period that begins after November 15, 2009.

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. Our review of the procedural steps taken indicates that 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: Sandra E. Evans  
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Federal Deposit Insurance Corporation

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Assistant to the Board of Governors  
Federal Reserve System

ENCLOSURE

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  
DEPARTMENT OF THE TREASURY,  
OFFICE OF THRIFT SUPERVISION  
ENTITLED  
"RISK-BASED CAPITAL GUIDELINES;  
CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE:  
REGULATORY CAPITAL; IMPACT OF MODIFICATIONS TO GENERALLY  
ACCEPTED ACCOUNTING PRINCIPLES; CONSOLIDATION OF ASSET-BACK  
COMMERCIAL PAPER PROGRAMS; AND OTHER RELATED ISSUES"  
(RINS: 1557-AD26, 3064-AD48, 1550-AC36, DOCKET NO. R-1368)

(i) Cost-benefit analysis

In its submission to the Comptroller General, the agencies did not include a cost-benefit analysis of the final rule.

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

The agencies have determined that the final rule will not have a significant impact on a substantial number of small banking organizations. The agencies expect that few small banking organizations will elect to implement the transition mechanism set forth in the final rule, and they will not be affected by the removal of the ABCP exclusion. Therefore, the agencies certify that the final rule will not have a significant economic impact on a substantial number of small banking organizations.

Under the Small Business Administration definition, a small entity includes a commercial bank, bank holding companies (BHC), or savings association with assets of \$175 million or less (a small banking organization). As a general matter, the Board's general risk-based capital rules apply only to a BHC that has consolidated assets of \$500 million or more. Therefore, the proposed changes to the Board's general risk-based capital rules for BHCs will not affect small BHCs.

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

OCC and OTS each determined that its proposed rule will not result in expenditures by the private sector, or state, local, and tribal governments, in aggregate, of \$100

million or more in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On September 15, 2009, the agencies published a notice of proposed rulemaking that solicited information and views from the public on risk-based capital guidelines. 74 Fed. Reg. 47,138. The agencies received approximately 41 timely comment letters, which are addressed in the final rule. 75 Fed. Reg. 4637.

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

The agencies have reviewed the final rule. The Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Board, FDIC, and OCC note that instructions related to ABCP conduits in regulatory reports will require revision. The Board, FDIC, and OCC also note that the instructions for other items in regulatory reports will require revisions related to the delay and phase-in options included in the final rule. If these revisions are determined to be significant, the revisions would be incorporated into a proposal that the agencies would publish with a request for comment in accordance with the requirements of the Act.

Statutory authorization for the rule

The agencies state the final rule is authorized under 12 U.S.C. 24, 36, 92a, 93a, 161, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1462, 1462a, 1463, 1464, 1467a, 1814, 1815(a), 1815(b), 1816, 1817(j)(13), 1818, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1820(d)(9), 1828 (note), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831, 1831n note, 1831i, 1831o, 1831p–1 1831r–1, 1831w, 1831x, 1833(j), 1835, 1835a, 1843(c)(8), 1844(b), 1882, 1972(1), 2901–2907, 3105, 3106, 3108, 3310, 3331–3351, 3905–3909, and 4808; 15 U.S.C. 78b, 78I(b), 78I(i), 78q, 78q–1, 78w, 780–4(c)(5), 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128; and Pub. L. 102–233, 105 Stat. 1761, 1789, 1790, (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

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

OCC and OTS have determined that this rulemaking is an economically significant regulatory action for purposes of the Order. However, OCC and OTS state that because the rule addresses changes to accounting standards that will become

effective for national banks and savings associations as of the beginning of their first annual reporting period that begins after November 15, 2009, the issuance of this rule is subject to the procedures set forth in section 6(a)(3)(D) of Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, the agencies did not include an analysis of the final rule under the Act.