



441 G St. N.W.
Washington, DC 20548

B-336024

February 29, 2024

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

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Federal Housing Finance Agency: Supervisory Letter – Minimum Liquidity and Cash Flow Calculation Under Advisory Bulletin 2018-07*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Housing Finance Agency (FHFA) entitled “Supervisory Letter – Minimum Liquidity and Cash Flow Calculation Under Advisory Bulletin 2018-07.” We received the supervisory letter on October 30, 2023. On February 13, 2024, FHFA stated it does not plan to publish this supervisory guidance in the *Federal Register* or on the agency’s website and that the letter was sent directly to the affected regulated entities—the eleven Federal Home Loan Banks. Email from Managing Associate General Counsel, FHFA, to Paralegal Specialist, GAO, Subject: *RE: [EXT] FW: Submission of Minimum Liquidity and Cash Flow Calculation Supervisory Letter to GAO* (Feb. 13, 2024). The effective date is December 31, 2023.

According to FHFA, the supervisory letter is setting forth FHFA's expectations on how a Federal Home Loan Bank (FHLBank) should determine whether it is maintaining a "safe and sound" minimum level of liquidity as contemplated under prior guidance. In the supervisory letter, FHFA states that it will consider a temporary reduction in an FHLBank's liquidity position to have been carried out in a "safe and sound manner" if it continues to maintain not less than five calendar days of positive liquidity under the applicable calculation.

Enclosed is our assessment of FHFA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Clinton Jones
General Counsel
Federal Housing Finance Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL HOUSING FINANCE AGENCY
ENTITLED
“SUPERVISORY LETTER – MINIMUM LIQUIDITY AND CASH FLOW
CALCULATION UNDER ADVISORY BULLETIN 2018-07”

(i) Cost-benefit analysis

The Federal Housing Finance Agency (FHFA) did not prepare a cost-benefit analysis for the supervisory letter. In its submission to us, FHFA indicated that it considered preparation of an analysis of the costs and benefits of the supervisory letter to be not applicable.

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

FHFA did not address RFA in the supervisory letter. In its submission to us, FHFA indicated the requirements of the RFA are not applicable to the supervisory letter.

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

As an independent regulatory agency, FHFA is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FHFA is not subject to the Act.

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

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

FHFA did address notice-and-comment procedures in the supervisory letter or in its submission to us.

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

FHFA determined the supervisory letter contained no information requirements subject to PRA.

Statutory authorization for the rule

FHFA issued the supervisory letter addressing matters found in the appendix to part 1236 of title 12, *Code of Federal Regulations*.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FHFA is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FHFA is not subject to the Order.