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December 15, 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 (FCA); Federal Housing Finance Agency (FHFA) (collectively, the agencies) entitled "Margin and Capital Requirements for Covered Swap Entities" (RINs: 1557-AD43; 7100-AD74; 3064-AE21; 3052-AC69; 2590-AA45). We received the rule on November 18, 2015. It was published in the *Federal Register* as a final rule on November 30, 2015. 80 Fed. Reg. 74,840.

The 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. 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: 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-AD43; 7100-AD74; 3064-AE21; 3052-AC69; 2590-AA45)

(i) Cost-benefit analysis

The final rule describes the potential costs of initial margin requirements. 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) state that the estimated annual costs of the initial margin requirements range from \$672 million to roughly \$46 billion depending on the specific initial margin estimate and the incremental funding cost that is used to compute the estimate. The agencies also believe that the final rule will achieve financial stability benefits. In its submission of the 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 final rule would have a significant economic impact on a substantial number of small entities. OCC estimates that the final rule will not have a significant impact on a substantial number of OCC-supervised small entities. FDIC certified that this final rule does not have a significant impact on a substantial number of small FDIC-supervised institutions. FHFA believes that the 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. FCA certified that the 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.

(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. In this final rule OCC stated that the proposed rule is likely to result in the expenditure by the private sector of \$100 million or more in any one year (adjusted annually for inflation). The OCC stated that it had prepared an impact analysis and identified and considered alternative approaches.

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

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

On May 11, 2011, the agencies originally published a proposed rule. 76 Fed. Reg. 27,564. The agencies received over 100 comments in response to the 2011 proposal from a variety of commenters, including banks, asset managers, commercial end users, and various trade associations. Following the issuance of an international framework proposal, the agencies re-opened the comment period to allow for additional comments in relation to the proposed international framework. 77 Fed. Reg. 60,057 (Oct. 2, 2012). Following the publication of the 2013 international framework the agencies published a re-proposal of the agencies' rule in September 2014. 79 Fed. Reg. 57,348 (Sept. 24, 2014). The agencies responded to comments made on the 2011 proposal in this re-proposal. The agencies received over 55 comments in response to this re-proposal. The agencies also met with several commenters at their request to discuss their concerns. The agencies responded to comments in the final rule.

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

The agencies also determined that the final rule contains information collection requirements. 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 final rule also states that the Board proposes to extend for 3 years, with revision, "Reporting Requirements Associated Regulation KK (Margin and Capital Requirements for Covered Swap Entities)" with OMB Control Number 7100-0364. The total estimated annual burdens as stated in the final rule are 14,780 hours for OCC, 739 for FDIC, and 36,964 for the Board. FCA determined in the final rule that the 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 that have an exception under the Act. FHFA determined the final rule does not contain an information collection requirement for any entity under its regulatory authority.

Statutory authorization for the rule

OCC promulgated this 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 780-10(e) of title 15, United States Code.

The Board promulgated this 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 780-10(e) of title 15, United States Code.

FDIC promulgated this final rule under the authority of section 6s(e) of title 7; sections 1813, 1818, 1819, and 3108 of title 12; and section 780-10(e) of title 15, United States Code.

FCA promulgated this final rule under the authority of section 6s(e) of title 7 and section 780-10(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 this 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 final rule.