



## OCC Regulatory Impact Analysis 2020-14

### Final Rulemaking: Part 7

October 26, 2020

**Purpose:** The Policy Analysis Division of the Economics Department prepares a regulatory impact analysis for proposed and final rules. This Regulatory Impact Analysis pertains to the Part 7 rulemaking.

**Related Link:**

OCC News [2020-158](#):- “OCC Finalizes Update to Activities and Operations Rule.”

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#### I. Summary Assessment

The Office of the Comptroller of the Currency (OCC) is issuing a final rule to revise and reorganize its regulations relating to the activities and operations of national banks and federal savings associations (FSAs). This rule clarifies and codifies recent OCC interpretations, integrates certain regulations for national banks and FSAs, and updates or eliminates outdated regulatory requirements. Additionally, this rule will include technical changes throughout part 7 and it amends part 5 to provide FSAs with the same corporate governance flexibility the final rule provides to national banks.

As you requested, we have assessed the impact of the final rule to determine if, pursuant to the Regulatory Flexibility Act (RFA), the rule will have a significant economic impact on a substantial number of small entities. In addition, consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), our review considers whether mandates imposed by the final rule may result in an expenditure of \$157 million or more annually by state, local, and tribal governments or by the private sector.<sup>1</sup> Our review also considers whether the rule qualifies as a major rule under the Congressional Review Act (CRA).

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<sup>1</sup> We estimate the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2019, which are the most recent annual data available. The deflator was 71.868 in 1995 and 112.381 in 2019, resulting in an inflation adjustment factor of 1.57 ( $112.381/71.868 = 1.57$ , and  $\$100 \text{ million} \times 1.57 = \$157 \text{ million}$ ).

Because the rule does not impose any new mandates, we estimate that the costs, if any, associated with the rule will be modest. Thus, we believe the rule will not result in an expenditure of \$157 million or more annually by state, local, and tribal governments or by the private sector. Furthermore, we believe the rule will not have a significant economic impact on a substantial number of OCC-supervised small entities. We also believe the final rule is not a major rule under the CRA.

## **II. Background**

Consistent with safety and soundness, the OCC periodically reviews its regulations to eliminate outdated or otherwise unnecessary regulatory provisions and, where possible, to clarify or revise requirements imposed on national banks and FSAs. Where appropriate, these reviews consider opportunities to integrate rules that apply to national banks with similar rules that apply to FSAs.

## **III. The final rule**

The OCC is revising and reorganizing subparts A through D of 12 CFR part 7. Specifically, the final rule clarifies and codifies recent OCC interpretations, integrates certain regulations for national banks and FSAs, and updates or eliminates outdated regulatory requirements that no longer reflect the modern financial system. Additionally, this rule will include technical changes throughout part 7. For example, revisions to subpart A include new regulations covering tax equity finance transactions, derivatives activities, and payment system memberships. Revisions to subpart B address corporate governance issues, such as expanding the ability of national banks to choose corporate governance procedures under State or other law, clarifying permissible anti-takeover provisions, and adding provisions relating to capital stock-related activities. The OCC also is updating and integrating rules relating to bank hours and closings in subpart C and updating rules relating to loan production and deposit production offices and remote service units in subpart D.

The OCC also is implementing more general changes throughout part 7. Specifically, the OCC is removing outdated or superfluous regulations; consolidating related regulations into one section; and making technical changes throughout part 7 by replacing the word “shall” with another appropriate word. In addition, the OCC is integrating a number of rules in part 7 to include FSAs.<sup>2</sup> Additionally, the final rule amends part 5 to provide FSAs with the same corporate governance flexibility the final rule provides to national banks.

## **IV. Impact on banks**

The OCC currently supervises 1,156 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks).<sup>3</sup> Because the final rule will not impose new mandates on more than a limited number of banks, we believe the costs associated with it, if any, will be minimal.<sup>4</sup>

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<sup>2</sup> This rule will not integrate all rules in part 7 that could potentially be integrated.

<sup>3</sup> Based on data accessed using FINDRS on October 20, 2020.

<sup>4</sup> For specific examples, see the table in appendix A to the memo for the proposed rule (April 13, 2020).

## V. UMRA

Consistent with the UMRA, our review considers whether the mandates imposed by the final rule may result in an expenditure of \$157 million or more by state, local, and tribal governments, or by the private sector, in any one year. The rule will not impose new mandates on more than a limited number of banks. Therefore, we conclude the rule will not result in an expenditure of \$157 million or more annually by state, local, and tribal governments, or by the private sector.

## VI. RFA

As part of our analysis, we consider whether the rule will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 745 small entities.<sup>5</sup> Because the rule applies to all OCC-supervised depository institutions, the final rule will affect all small OCC-supervised entities, and thus a substantial number of them. However, because we estimate that the costs, if any, associated with the rule will be minimal, the final rule will not have a significant economic impact on any small OCC-supervised entities. Therefore, the rule will not have a significant economic impact on a substantial number of small entities.

## VII. CRA

The CRA defines a “major rule” as a rule that the Administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) finds has resulted in or is likely to result in:

1. An annual effect on the economy of \$100 million or more;
2. A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*An annual effect on the economy of \$100 million or more*

As noted above, we estimate that expenditures associated with the final rule, if any, will be modest. Therefore, we expect the annual effect on the economy to be less than \$100 million.

*A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions*

Because of the highly competitive markets for banking and credit intermediation services, only a major increase in costs that applies to all banks, such as an increase in interest rates or

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<sup>5</sup> We base our estimate of the number of small entities on the SBA’s size thresholds for commercial banks and savings institutions, and trust companies, which are \$600 million and \$41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2019, to determine size because a “financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the U.S. Small Business Administration’s *Table of Size Standards*.

deposit insurance fees, or requiring a specific product-related incremental cost (e.g., an appraisal) would be likely to result in a measurable increase in costs or prices. The substantial number of banks, thrifts, and savings associations currently operating in the United States creates a competitive environment, limiting the extent to which a subset of depository institutions could increase prices without losing customers. Thus, any incremental costs associated with rules that apply only to specific types of banking organizations are unlikely to be passed along to customers. Rather, these costs are more likely to be absorbed into the overhead (non-interest expenses) of affected institutions. This is especially true in cases where the direct costs of a rule are minimal, such as this rule. Thus, we fully expect any compliance costs to be absorbed as ongoing bank administrative expenses. Therefore, we do not expect the rule to result in an increase in costs or prices for consumers or any other entities or geographic regions.

*Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets*

A significant adverse effect on competition, employment, or investment is more likely to occur when a rule specifically prohibits an activity, restricts access to a particular market, or significantly increases the production costs of certain institutions that provide the good or service. None are a factor in this final rule.

Thus, for the reasons discussed above, we believe the final rule is a not major rule under the CRA.