U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

B-330843

October 22, 2019

Congressional Requesters

Subject: *Board of Governors of the Federal Reserve System—Applicability of the Congressional Review Act to Supervision and Regulation Letters*

This responds to your request[1] for our legal opinion as to whether three Supervision and Regulation Letters (SR Letters) issued by the Board of Governors of the Federal Reserve System (FRB) are rules for purposes of the Congressional Review Act (CRA). The first letter, *SR 12-17*, provides a new framework for supervision of large financial institutions. The second letter, *SR 14-8,* addresses actions banks should take for recovery planning to return to solid financial condition. The third letter, *SR 15-7*, sets forth the roles and responsibilities of the governance structure of the supervisory program.

For the reasons discussed below, we conclude that two of the SR letters, *SR 12-17* and *SR 14-8*—are rules under CRA, which requires that they be submitted to Congress for review. We also conclude that the third SR letter, *SR 15-7*, is not a rule under CRA.[2]

Our practice when rendering opinions is to contact the relevant agencies and obtain their legal views on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/products/GAO-06-1064SP. We contacted FRB to obtain the agency's views. Letter from Managing Associate General Counsel, GAO, to General Counsel, FRB (Mar. 14, 2019). We received FRB's response on June 13, 2019. Letter from General Counsel, FRB, to Managing Associate General Counsel, GAO (June 13, 2019) (Response Letter).

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[1] Letter from Senator Thom Tillis; Senator Mike Crapo; Senator David Perdue; Senator Michael Rounds; Senator Kevin Cramer, to Gene Dodaro, Comptroller General, GAO (Feb. 22, 2019).

[2] In B-331324, issued today, we concluded that one other Supervision and Regulation Letter, *SR 11-7*, is a rule under CRA and must be submitted to both Houses of Congress and the Comptroller General before it could take effect. 5 U.S.C. § 801(a)(1).

BACKGROUND

FRB's authority and responsibilities

FRB has regulatory and supervisory jurisdiction over several types of financial institutions including state-chartered banks that are members of the Federal Reserve System, bank holding companies, and foreign bank holding companies operating in the United States.[3] *See, e.g.*, 12 U.S.C. §§ 325, 1844. FRB has the authority to inspect the financial condition of an institution under its jurisdiction to ensure the institution is not at risk of insolvency. *See, e.g.*, 12 U.S.C. §§ 325, 1844. When FRB inspects the financial condition of an institution, it inspects the institution's safety and soundness. FRB, *The Federal Reserve System Purposes and Functions* 74 (10th ed. 2016). FRB performs safety and soundness reviews through risk-based examinations. *Id.* at 83. These examinations are conducted through on-site examinations and inspections as well as off-site scrutiny and monitoring. *Id.* For the largest institutions, FRB maintains a continuous supervisory presence and full-time examiners. *Id.*

As part of an effort to strengthen its supervision of the largest and most complex institutions, FRB created an internal component called the Large Institution Supervision Coordinating Committee (LISCC). *Id.* at 86. The LISCC is responsible for evaluating the financial conditions of the institutions assigned to it. *Id.* The LISCC supervises domestic bank holding companies that have been designated as global systemically important banks, foreign banking organizations that maintain large and complex operations in the United States, and non-financial institutions that the Financial Stability Oversight Council determines should be under FRB supervision.[4] *Id.* FRB has set the criteria for placing institutions under LISCC supervision and is free to make placement or removal decisions at any time. *See* FRB, *Large Institution Supervision Coordinating Committee available at* https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm (last visited Oct. 2, 2019).

According to FRB, when examiners believe that guidance on a particular issue is necessary, FRB issues supervisory statements. Response Letter, at 2. These supervisory statements are called SR Letters. SR Letters are intended by FRB to address significant policy and procedural matters related to FRB's supervisory

[3] Some non-financial institutions are also subject to FRB's jurisdiction. *See* 12 U.S.C. § 5323.

[4] The Financial Stability Oversight Council is a council of the heads of the federal regulatory agencies, as well as representatives from state regulatory agencies and others that is required to identify risks to the financial stability of the United States and respond to emerging threats to the stability of the U.S. financial system.

responsibilities.[5] The letters provide transparency to the industry and FRB staff concerning supervisory insights, practices, and approaches. *Id.* According to FRB, SR Letters are not binding on any institution. *Id.*; *See also* FRB, *Interagency Statement Clarifying the Role of Supervisory Guidance*: *SR 18-5* (Sept. 18, 2018). FRB intended the SR Letters at issue to inform financial institutions of the agency's supervisory views. Response Letter, at 2. Active SR Letters are publicly available on the FRB website.

SR Letters

A description of each SR Letter at issue follows.

- FRB, Consolidated Supervision Framework for Large Financial Institutions: *SR 12-17/CA 12-14*, (Dec. 17, 2012) (*SR 12-17*) states that it sets forth a new framework of supervision for all institutions under LISCC supervision. *SR 12-17*, at 1. The new framework is designed to enhance resiliency of a firm, to lower the probability of its failure to or inability to serve as a financial intermediary, as well as to reduce the impact on the financial system and the broader economy in the event of a firm's failure. *Id.* at 2. *SR 12-17* details actions firms should take regarding capital and liquidity planning and positions, corporate governance, and management of critical operations, among other things.[6] *Id.* at 4–7.

- FRB, *Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies: SR 14-8* (Sept. 25, 2014) (*SR 14-8*) addresses actions banks should take for recovery planning to ensure they can return to solid financial condition during times of distress.[7] *SR 14-8* at 1. *SR 14-8* only applies to eight bank holding companies specifically named in the document; this group is a subset of the LISCC institutions. *Id.* at 1, n. 1.

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[5] FRB, *Supervision and Regulation Letters, available at* https://www.federalreserve.gov/supervisionreg/srletters/srletters.htm (last visited Oct. 02, 2019).

[6] For example, *SR 12-17* states that firms should "[u]tilize comprehensive projections of the level and composition of capital and liquidity resources, supported by rigorous and regular stress testing to assess the potential impact of a broad range of expected and potentially adverse scenarios." *SR 12-17* at 4.

[7] A firm is in recovery when it is experiencing or is likely to encounter considerable financial distress but could reasonably return to a position of financial strength if appropriate actions are taken. *SR 14-8* at 2. *SR 14-8* provides expectations for institutions' recovery planning processes, and it states institutions should test the effectiveness of their (continued) recovery options under a range of internal and external stresses, among other things. *Id.* at 2–3.

- FRB, *Governance Structure of the Large Institution Supervision Coordinating Committee (LISCC) Supervision Program*: *SR 15-7*, (Apr. 17, 2015) (*SR 15-7*) sets forth the roles and responsibilities of the committees, subgroups and dedicated supervisory teams that collectively comprise the LISCC's governance structure. *SR 15-7* at 2.

The Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires all federal agencies, including independent regulatory agencies, to submit a report on each new rule to both Houses of Congress and to the Comptroller General before it can take effect. 5 U.S.C. § 801(a)(1). The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date. 5 U.S.C. § 801(a)(1)(A). In addition, the agency must submit to the Comptroller General a complete copy of the cost-benefit analysis of the rule, if any, and information concerning the agency's actions relevant to specific procedural rulemaking requirements set forth in various statutes and executive orders governing the regulatory process. 5 U.S.C. § 801(a)(1)(B).

CRA adopts the definition of rule under the Administrative Procedure Act (APA), 5 U.S.C. § 551(4), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 804(3). CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. § 804(3).

FRB did not submit a CRA report for any of the SR Letters to Congress or the Comptroller General. In its letter to our office, FRB did not provide its views regarding whether any of the three SR Letters are rules under CRA or whether any exceptions would apply. Response Letter. FRB explained it is currently reviewing recent guidance from the Office of Management and Budget (OMB) on compliance with CRA.[8] FRB is reviewing the rules it submits to OMB for major rule determinations as well as its obligation to submit guidance documents.

ANALYSIS

To determine whether each of the three SR letters are rules subject to review under CRA, we first address whether each SR letter meets the APA definition of a rule. If an SR letter meets the definition of a rule, we next determine whether any of the CRA exceptions apply. We address each SR Letter separately below.

[8] Office of Mgmt. & Budget. M-19-14, "Guidance on Compliance with the Congressional Review Act" (Apr. 11, 2019).

SR 12-17

We conclude that *SR 12-17* meets the APA definition of a rule upon which CRA relies. First, *SR 12-17* is an agency statement as it was issued by FRB. Second, *SR 12-17* is of future effect, as it provides new guidance to banks on actions they should take to increase their resiliency to prepare for future financial distress. *SR 12-17* at 2. *See* B-316048, Apr. 17, 2008 (finding that an agency action was of future effect because the action was prospective in nature since it was concerned with policy considerations for the future rather than the evaluation of past or present conduct). Finally, *SR 12-17* is designed to implement, interpret, or prescribe law or policy as it sets forth supervisory expectations as determined by FRB under its authority to supervise financial institutions to ensure they operate in a safe and sound manner.

SR 12-17 is similar in language and intent to other FRB guidance documents that we have previously determined to be rules under CRA. *See generally* B-329272, Oct. 19, 2017 (Leveraged Lending). In 2017, we found that interagency guidance on leveraged lending issued by FRB and other agencies was a rule under CRA. *Id.* The leveraged lending guidance also set forth agency supervisory expectations, stating that financial institutions should take certain actions for the sound risk management of leveraged lending activities. For instance, in one part, the leveraged lending guidance states, "A financial institution's underwriting standard should be clear, written and measurable, and should accurately reflect the institution's risk appetite for leveraged lending transactions." 78 Fed. Reg. 17766, 17772 (Mar. 22, 2013). The language indicated that an institution may need to consider changes to its internal operations and procedures to ensure it was in line with the guidance. This language in the leveraged lending guidance is similar to language contained here in *SR 12-17*, which also provides that institutions should take certain actions to enhance their safety and soundness.[9]

In its response letter, FRB stated SR Letters do not establish binding requirements on any institution but only provide transparency to the industry and FRB staff concerning supervisory insights, practices, and approaches. Response Letter. This fact, however, does not change our analysis. In Leveraged Lending, we also explained how the guidance document in that case was a rule under CRA. B-329272 at 4–6. We reached that conclusion based on our prior opinions and the legislative history of CRA. The legislative history states:

> "Although agency interpretive rules, general statements of policy, guideline documents, and agency policy and procedure manuals may not be subject to

[9] *SR 12-17* states, "Additionally, each firm should ensure that critical operations are sufficiently resilient to be maintained, continued, and funded even in the event of failure or material financial or operational distress." *SR 12-17* at 7.

> the notice and comment provisions of [the APA], these types of documents are covered under the congressional review provisions of [CRA]."

142 Con. Rec. H3005 (daily ed. Mar. 28, 1996). Based on this statement and others in the legislative history, we have concluded the provisions of CRA are to be interpreted broadly. *See, e.g.*, B-329272 at 5. Consequently, even though *SR 12-17* is a non-binding guidance document, similar to the guidance document in our Leveraged Lending opinion, it still meets the APA definition of a rule.

Having concluded that *SR 12-17* meets the APA definition of rule, we now turn to whether any of the three CRA exceptions apply. We conclude they do not. First, *SR 12-17* applies to all institutions under LISCC supervision and is, therefore, a rule of general and not particular applicability. *See* B-287557, May 14, 2001 (determining that all that is required to determine that an agency action is of general applicability is a finding that an agency action has "general applicability within its intended range, regardless of the magnitude of that range"). Second, it deals with actions banks should take and not FRB management or personnel and is, therefore, not a rule of agency management or personnel.

This leaves the exception for rules of "agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties." 5 U.S.C. § 804(3)(C). We find that this exception does not apply because *SR 12-17* has a substantial impact on the regulated community. We examined a similar issue in 2017, in our review of the 2016 Amendment to the Tongass Land and Resource Management Plan, finding that the plan at issue did not meet this exception because it had substantive impacts on the regulated community. B-238859, Oct. 23, 2017. In that case, the U.S. Department of Agriculture (USDA) sought to revise the Tongass National Forest Plan to identify the uses that could occur in each area of the forest. *Id.* Amongst other things, the agency wanted to amend the Tongass National Forest Plan by transitioning timber harvest activities from old-growth to new-growth trees. *Id.* at 5–6. This transition would affect the kind of timber harvesters could take from the forest, impacting the operations of the harvesters in various ways. *Id.* In doing so, we noted that USDA encoded the agency's substantive value judgment in favor of this transition and would have a substantial impact on the local timber industry. Consequently, because the plan would have a substantial impact on the regulated community, we found the exception did not apply to the plan.

We reached our conclusion in Tongass relying upon the Fifth Circuit's decision in *Phillips Petroleum Co. v. Johnson*, 22 F.3d 616 (5th Cir. 1994).[10] In that case, the

[10] Because CRA exceptions are closely modeled after and similar to APA exceptions, we have used court decisions on the APA exceptions to guide our analysis of the CRA exceptions. *See* B-329926, Sept. 10, 2018. The APA exempts procedural rules from having to undergo notice-and comment rulemaking.

court held that an unpublished internal agency paper that changed the criteria for valuing liquid natural gas products used to calculate royalties was a substantive rule subject to APA notice-and-comment rulemaking requirements. *Phillips Petroleum*, 22 F.3d at 620–21. Because the agency paper would dramatically affect the royalty values of all oil and gas leases, the court concluded the paper had a substantial impact on the industry.

As in our 2017 Tongass opinion and *Phillips Petroleum*, *SR 12-17* has a substantial impact on the regulated community. *SR 12-17* lays out actions institutions should take to ensure they are resilient if they enter a period of financial distress and prevent harm to the financial system in case of the institution's failure. *SR 12-17* at 2. These actions include changes to an institution's capital and liquidity planning process and how it manages core business lines and critical operations, among other actions. *Id.* at 4–7. As such, these actions affect an institution's business and internal operations. In both Tongass and *Phillips Petroleum*, the agency actions at issue led to changes to what businesses and other regulated entities could expect from the agency, which could lead to changes in the regulated entities' internal operations and polices as needed. Because the actions listed in *SR 12-17* could also lead to and encourage change to an institution's internal operations, *SR 12-17* has a substantial impact on the regulatory community. Therefore, the exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, does not apply.

Having concluded that *SR 12-17* meets the definition of a rule and no exception applies, it must, therefore, be submitted to both Houses of Congress and the Comptroller General for review before it can take effect. 5 U.S.C. § 801(a)(1).

SR 14-8

To determine whether *SR 14-8* is a rule under CRA, we follow the same statutory framework as applied to *SR 12-17* above. Based on that same analysis, we conclude that *SR 14-8* meets the APA definition of rule and that no CRA exception applies.

First, *SR 14-8* is an agency statement as it was issued by FRB. Second, *SR 14-8* is of future effect as it provides guidance on an additional area of forward-looking supervisory expectations for the eight named bank holding companies to engage in for recovery planning. *SR 14-8* at 1. Third, *SR 14-8* also implements, interprets, or prescribes law or policy as it supplements the guidance provided by *SR 12-17* and sets forth supervisory expectations as determined by FRB under its authority to

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5 U.S.C. § 553(b)(A). The CRA exemption for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties was modeled after this exception. *See* 142 Cong. Rec. S3683-01, S3687 (daily ed. Apr. 18, 1996).

supervise financial institutions to ensure they operate in a safe and sound manner.[11] Also, the same analysis above regarding the non-binding nature of *SR 12-17* applies to *SR 14-8* for the same reasons outlined on page 6.

Having concluded *SR 14-8* meets the APA definition of a rule, we now turn to the applicability of any of the CRA exceptions. We can conclude that the second and third exceptions do not apply. With regard to the second exception, the guidance deals with actions banks should take and not FRB agency management or personnel. With regard to the third exception, the guidance does not meet the exception for rules of "agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties" for the same reasons outlined, on pages 6–8 above, for *SR 12-17*. Specifically, because the actions listed in *SR 14-8* could also lead to and encourage change to an institution's internal operations, *SR 14-8* has a substantial impact on the regulatory community. This leaves the first exception for rules of particular applicability.
5 U.S.C. § 804(3)(A).

SR 14-8 only applies to eight bank holding companies specifically named in the guidance. *SR 14-8* at 1, n. 1. These eight bank holding companies are a subset of the institutions under LISCC supervision, and the unnamed LISCC institutions are not subject to the guidance. *Id.* at 1. As noted earlier, FRB sets the selection criteria and process for placing institutions under LISCC supervision, and the same holds true for institutions subject to this guidance. According to FRB, the selected firms were identified as posing an elevated risk to U.S. financial stability at the time of issuance. Response Letter, at 2.

Rules of particular applicability are addressed to specific, identified entities. *American Broadcasting Co., Inc. v. FCC*, 682 F.2d 25, 31–32 (2d Cir. 1982) (explaining that, ". . . [a] rule is one of particular applicability if it is addressed to and served upon named persons."); *Recommendations and Miscellaneous Statements*, 39 Fed. Reg. 4846, 4849 (Feb. 7, 1974) (explaining that a rule of general applicability is one with an open class but a rule of particular applicability is limited to those named). The legislative history of CRA and relevant case law indicate rules of particular applicability are those rules that not only are addressed to an identified entity and but also address actions that entity may or may not take, taking into account facts and circumstances specific to that the entity.

According to the legislative history of CRA:

> "Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for

[11] For example, it states, "To address this gap in companies' planning and to enhance their safety and soundness, [the eight named bank holding companies] should proactively plan and prepare for such events." *SR 14-8* at 1–2.

> a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule."[12]

142 Cong. Rec. S3683-01, S3687 (daily ed. April 18, 1996). In all of the aforementioned examples, the agency instructs or permits an identified entity to perform or not to perform a specific act due to the relevant facts and circumstances. The legislative history highlights Internal Revenue Service (IRS) private letters as examples. *Id.* ("IRS private letter rulings . . . are classic examples of rules of particular applicability . . ."). IRS issues private letter rulings to taxpayers who request a specific ruling on the facts of their situation.[13] *Id.* IRS issues private letter rulings only to specific taxpayers to either approve or disapprove the taxpayer's proposed tax consequences of a potential transaction given the relevant facts and circumstances.

The limited case law that has addressed what constitutes a rule of particular applicability is consistent with the legislative history. *American Broadcasting Companies* dealt with the FCC's approval of a rate increase for AT&T. *American Broadcasting Co.*, 682 F.2d at 27–30. The court only addressed the first issue of whether the rule was addressed to a specific entity because ratemaking is specifically considered a rule of particular applicability by the legislative history of the APA. *Id.* at 32 (quoting Attorney General's Manual on the Administrative Procedure Act 22 (1947)). There, the court concluded that FCC permitted a specific entity, AT&T, to engage in a specific act, increase subscriber rates, based on the relevant facts and circumstances. *Id.* at 31–32.

Here, while there are specified entities—the eight named bank holding companies—FRB does not address individualized actions that an identified entity may or may not take based on the individual circumstances of each bank holding company with respect to this guidance. Instead, *SR 14-8* covers recovery planning generally and focuses on a variety of actions the eight bank holding companies should consider or take. This difference is highlighted when compared with IRS private letter rulings. There, the IRS tells a taxpayer whether or not they may conduct the transaction in question to obtain the taxpayer's desired tax consequences based on the facts and

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[12] The legislative history also provides examples of rules of particular applicability such as import and export licenses, individual rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits, broadcast licenses, and product approvals.

[13] IRS states, "A [private letter ruling] is appropriate when the *issuer/taxpayer* wishes to confirm with the IRS that *a prospective transaction* will not likely result in a tax violation." IRS, *Tax Exempt Bonds Private Letter Rulings: Some Basic Concepts*, *available at* https://www.irs.gov/tax-exempt-bonds/teb-private-letter-ruling-some-basic-concepts (emphasis added).

circumstances described by the taxpayer. Here, *SR 14-8* does not address any individualized and discreet action a bank holding company should or should not take like the private letter rulings. While *SR 14-8* does provide the minimum elements a recovery plan should address, these are generic instructions to all eight bank holding companies. None of the listed elements are required to be addressed for a specified reason by a specific bank.

While *SR 14-8* does address identified entities, it does not instruct any of the bank holding companies to take any specific act based on particular facts and circumstances. Consequently, the exception for rules of particular applicability does not apply.

Having concluded that *SR14-8* meets the definition of a rule and no exception applies, it must, therefore, be submitted to both Houses of Congress and the Comptroller General for review before it takes effect. 5 U.S.C. § 801(a)(1).

SR 15-7

Based on the same statutory framework used to analyze *SR 12-17* and *SR 14-8*, we conclude that *SR 15-7* meets the APA definition of rule. Unlike *SR 12-17* and *SR 14-8*, *SR 15-7*meets the exception for rules of "agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties." 5 U.S.C. § 804(3). Therefore, CRA does not require *SR 15-7* be submitted to Congress and the Comptroller General.

SR 15-7 meets the APA definition of rule for the same reasons as *SR 12-17* and *SR 14-8*. First, *SR 15-7* is an agency statement as it was issued by FRB. Second, *SR 15-7* is of future effect as it sets out how the LISCC will be structured and operate in future examinations. Third, *SR 15-7* also implements, interprets, or prescribes law or policy because it sets out how FRB will supervise certain types of institutions under its jurisdiction.[14]

Having concluded *SR 15-7* meets the definition of a rule, we now turn to the CRA exceptions. First, *SR 15-7* is a rule of general applicability because it applies to all institutions subject to LISCC supervision. *SR 15-7* at 1. Second, *SR 15-7* is not related to agency management or personnel. This leaves the exception for rules of "agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties." 5 U.S.C. § 804(3)(C). Because *SR 15-7* only changes the way institutions interact with FRB and does not substantially affect the rights or obligations of the institutions, *SR 15-7* falls within the exception.

[14] *SR 15-7* states, "The remainder of this letter sets forth the roles and responsibilities of the committees, subgroups, and dedicated supervisory teams that collectively comprise the LISCC's governance structure." *SR 15-7* at 2.

The D.C. Circuit held that changes in the way an agency interacts with a non-agency party fall within the APA exception that this CRA exception was modeled after, provided that these changes do not substantially affect the non-agency party's rights or obligations. *James V. Hurson Associates v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000). In *Hurson*, the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS) changed the way it would interact with commercial food producers in the food label approval process. *Id.* at 279. FSIS used to accept label applications by mail or by in-person meetings with staff. *Id.* However, for a variety of reasons, FSIS decided to do away with most in-person meetings and rely mostly on mail applications. James V. Hurson Associates argued that because the agency substantially changed how food producers could interact with it, the rule was invalid because it should have gone through notice-and-comment rulemaking as a substantial rule. *Id.* at 280. The court disagreed. *Id.* at 282. The court stated the rule did not change the substantive criteria the agency would use to evaluate an application; it only changed the procedures used by the agency to evaluate applications, and therefore held that the rule was procedural and not subject to notice and comment.[15] *Id.* at 281.

This case is similar to *Hurson*. Here, institutions are still required to maintain a safe and sound financial condition and must abide by all legal and regulatory requirements. They also must undergo examinations. *SR 15-7* only explains changes as to how the LISCC is structured to fulfill its responsibilities. *See* note 12. *SR 15-7* did not change the substantive criteria FRB applies in examinations.[16] Even though the LISCC structure changed, the substantive guidelines and objectives remained the same. This is similar to *Hurson* where in-person meetings were discontinued by the agency but the agency still used the same substantive criteria to evaluate applications. Because *SR 15-7* does not change the substantive criteria used to examine institutions, it does not substantially affect the rights or obligations of non-agency parties, and, therefore, does fall within the exception for rules of "agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties." 5 U.S.C. § 804(3).

Having concluded that *SR 15-7* meets the APA definition of a rule but that an exception applies, it is not subject to CRA.

[15] This is similar to B-329916 where we found that a change in the timing of IRS enforcement activities under the Patient Protection and Affordable Care Act fell within the exception because the underlying reporting requirements on taxpayers remained the same. *See* B-329916, May 17, 2018.

[16] *SR 15-7* further states, "The LISCC supervisory program's objectives and core areas of focus are described in more detail in [*SR 12-17*]." *SR 15-7* at 1.

CONCLUSION

SR 12-17 and *SR 14-8* meet the APA definition of a rule and no exception applies. While *SR 15-7* also meets the APA definition of a rule, it falls within the exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. Accordingly, given our conclusions above, and in accordance with the provisions of 5 U.S.C. § 801(a)(1), *SR 12-17* and *SR 14-8* are subject to the requirement that they be submitted to both Houses of Congress and the Comptroller General for review before they can take effect. *SR 15-7* is not.

If you have questions about this opinion, please contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-7227 or Janet Temko-Blinder, Assistant General Counsel at (202) 512-7104.

Sincerely yours,

Thomas H. Armstrong
General Counsel

List of Requesters

The Honorable Thom Tillis
United States Senate

The Honorable Mike Crapo
United States Senate

The Honorable David Perdue
United States Senate

The Honorable Michael Rounds
United States Senate

The Honorable Kevin Cramer
United States Senate