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December 2014

DODD-FRANK REGULATIONS

Regulators' Analytical and Coordination Efforts

On December 18, 2014, this publication was revised to correct a visual error in the formula presented on page 106.

GAO-15-81

GAO Highlights

Highlights of GAO-15-81, a report to congressional addressees

December 2014

DODD-FRANK REGULATIONS

Regulators’ Analytical and Coordination Efforts

Why GAO Did This Study

The Dodd-Frank Act requires or authorizes various federal agencies to issue hundreds of rules to implement reforms intended to strengthen the financial services industry. GAO is statutorily mandated to annually study financial services regulations. This report examines (1) the regulatory analyses federal financial regulators conducted in Dodd-Frank rulemakings; (2) interagency coordination on rulemakings by federal financial regulators; and (3) the impact of selected Dodd-Frank provisions and related rules.

GAO reviewed 54 Dodd-Frank rules (effective July 23, 2013–July 22, 2014) to determine if required regulatory analyses and coordination were conducted; developed indicators on the impact of systemic risk-related provisions and rules; and conducted an economic analysis to assess the act’s impact on large bank holding companies. GAO also examined the regulatory analyses and coordination efforts for two rules in depth: the Volcker rule and swaps rules. These rules were chosen because the former required interagency coordination in drafting, while the latter is of interest to domestic and foreign regulators. Finally, GAO interviewed staff from domestic and foreign regulators, financial services businesses, industry associations, and academics.

GAO is not making any recommendations in this report. Regulators provided written and technical comments, and neither agreed nor disagreed with the report’s findings.

View GAO-15-81. For more information, contact A. Nicole Clowers at (202) 512-8678 or clowersa@gao.gov.

What GAO Found

Federal financial regulators—Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Consumer Financial Protection Bureau, Commodity Futures Trading Commission, and the Securities and Exchange Commission—have continued to conduct required regulatory analyses for rules issued pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). While financial regulators must consider costs and benefits of their rulemakings in certain circumstances, they are not required to formally analyze them. Regulators face data and modeling challenges in their consideration of the costs and benefits of their rulemakings, particularly for more complex rulemakings intended to address systemic risk or market stability. GAO and others have recommended strategies to address these challenges.

Regulators coordinated, as required or voluntarily, on 34 of the 54 Dodd-Frank rulemakings GAO reviewed. The Dodd-Frank Act and rulemaking process did not require regulators to coordinate on the remaining rulemakings. GAO focused particularly on coordination efforts involving two rulemaking efforts: (1) the Volcker rule, a rule prohibiting and restricting banking entities from, among other things, trading certain financial instruments using their own funds to profit from short-term price changes; and (2) rules related to regulation of the swaps (derivatives) market. For the Volcker rule, interagency coordination led regulators to adopt a common rule and regulators voluntarily have continued coordination efforts during rule implementation. For swaps rulemakings, regulators coordinated domestically and internationally. However, such coordination did not always result in harmonized rules, and key differences among some rules have raised compliance and market efficiency concerns among market participants, industry associations, and foreign regulators with whom GAO spoke. GAO will continue to monitor these issues in future work.

The full impact of the Dodd-Frank Act remains uncertain because many of its rules have not been finalized or insufficient time has passed to assess the impacts of final rules. Using recently released data, GAO updated indicators from its prior reports that monitor certain risk characteristics of large U.S. bank holding companies. Although changes in the indicators are not evidence of causal links to the act’s provisions, some indicators suggest these companies’ leverage generally decreased and their liquidity generally improved since the act’s passage. GAO’s updated regression analysis suggests that the act continued to have little effect on the funding costs of these companies and may be associated with improvements in some indicators of their safety and soundness. GAO also updated its indicators of the extent to which the act’s swap reforms have been associated with increases in margins posted in over-the-counter derivatives transactions. Although margin rules for uncleared swaps have not been finalized, the indicators suggest that holding companies have been requiring their counterparties to post a greater amount of collateral against derivatives contracts. Finally, GAO discusses potential future indicators for nonbank financial companies designated for supervision by the Board of Governors of the Federal Reserve System.

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Abbreviations

AIG	American International Group, Inc.
APA	Administrative Procedure Act
Basel Committee	Basel Committee on Banking Supervision
CEA	Commodity Exchange Act
CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
CRA	Congressional Review Act

Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
E.O.	Executive Order
EU	European Union
FDIC	Federal Deposit Insurance Corporation
Federal Reserve	Board of Governors of the Federal Reserve System
FHFA	Federal Housing Finance Agency
FINRA	Financial Industry Regulatory Authority
FSOC	Financial Stability Oversight Council
FTC	Federal Trade Commission
G-20	Group of Twenty
G-SIB	globally systemically important bank
GECC	General Electric Capital Corporation
HUD	Department of Housing and Urban Development
IOSCO	International Organization of Securities Commissions
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act
Prudential	Prudential Financial, Inc.
qualified mortgage	Ability-to-Repay and Qualified Mortgage Standards under the Truth standards rule in Lending Act (Regulation Z)
RFA	Regulatory Flexibility Act
SEC	Securities and Exchange Commission
SIFI	systemically important financial institution
Treasury	Department of the Treasury
USDA	Department of Agriculture
Volcker rule	Section 619 of the Dodd-Frank Act, Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds

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Congressional Addressees

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in response to the 2007–2009 financial crisis that disrupted the U.S. financial system and threatened the solvency of some large financial institutions and the health of the U.S. economy.[1] The act includes numerous reforms intended to strengthen the financial services industry and consolidates certain consumer protection responsibilities in the Bureau of Consumer Financial Protection, also known as the Consumer Financial Protection Bureau (CFPB). Under the Dodd-Frank Act, various federal agencies are directed or have the authority to issue hundreds of regulations to implement the act's provisions. As agencies continue to develop and implement these regulations, some industry associations and others have reported on the potential impact of the regulations, individually and cumulatively, on financial markets and nonfinancial institutions.

As federal agencies draft and implement regulations, they normally must comply with various federal rulemaking requirements. For example, substantive rulemakings—those that are generally subject to the notice-and-comment requirements of the Administrative Procedure Act (APA)—generally are required to include some form of regulatory analysis, which provides a formal way of organizing evidence that can help in understanding potential effects of new regulations. Certain statutes and executive orders require varying regulatory analyses, and the extent to which independent regulatory agencies, such as some of the federal financial regulators (financial regulators), are subject to the requirements

[1] Pub. L. No. 111-203, 124 Stat. 1376 (2010). We identified 236 provisions of the act that require regulators to issue rulemakings. See GAO, *Financial Regulatory Reform: Regulators Have Faced Challenges Finalizing Key Reforms and Unaddressed Areas Pose Potential Risks,* GAO-13-195 (Washington, D.C.: Jan. 23, 2013).

varies.[2] For example, Executive Order (E.O.) 12866 requires executive federal agencies to assess costs and benefits of not only proposed regulatory action but also of any alternatives.[3] However, this order does not apply to financial regulators such as banking, securities, or futures regulators, or CFPB.

Section 1573(a) of the Department of Defense and Full-Year Continuing Appropriations Act of 2011 amends the Dodd-Frank Act and mandates that GAO conduct an annual study of financial services regulations, including those of CFPB.[4] We issued our first three reports under this

[2]Independent regulatory agencies refers to the agencies identified as such in the Paperwork Reduction Act, including, but not limited to, agencies that we refer to as federal financial regulators—the Board of Governors of the Federal Reserve System, CFPB, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, and the Securities and Exchange Commission. 44 U.S.C. § 3502(5). Independent regulatory agencies are contrasted by executive agencies, which are cabinet departments and other agencies that answer directly to the president.

[3]E. O. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993). For significant rules, the order further requires agencies to prepare a detailed regulatory (or economic) analysis of both the anticipated benefits and costs of the regulation and the benefits and costs of potentially effective and reasonably feasibly alternatives. More recently, E. O. 13563 supplemented E. O. 12866, in part by incorporating its principles, structures, and definitions. E. O. 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011). E. O. 12866 contains 12 principles of regulation that direct agencies to perform specific analyses to identify the problem to be addressed, assess its significance, assess both the benefits and costs of the intended regulation, design the regulation in the most cost-effective manner to achieve the regulatory objective, and base decisions on the best reasonably obtained information available.

[4]Pub. L. No. 112-10, § 1573(a), 125 Stat. 38, 138-39 (codified at 12 U.S.C. § 5496b). We are directed to analyze (1) the impact of regulation on the financial marketplace, including the effects on the safety and soundness of regulated entities, cost and availability of credit, savings realized by consumers, reductions in consumer paperwork burden, changes in personal and small business bankruptcy filings, and costs of compliance with rules, including whether relevant federal agencies are applying sound cost-benefit analysis in promulgating rules; (2) efforts to avoid duplicative or conflicting rulemakings, information requests, and examinations; and (3) other matters related to the operations of financial services regulations deemed appropriate by the Comptroller General. The focus of our reviews is on the financial regulations promulgated pursuant to the Dodd-Frank Act.

mandate in November 2011, December 2012, and December 2013.[5] This report examines the

- regulatory analyses conducted by federal financial regulators, in their Dodd-Frank Act rulemakings, including their assessments of which rules they considered to be major rules;[6]
- coordination between and among federal and foreign regulators on Dodd-Frank Act rulemakings, in particular the Volcker and swaps rules;[7] and
- possible impact of selected Dodd-Frank Act provisions and their implementing regulations on the financial marketplace.

[5]GAO, *Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination*, GAO-12-151 (Washington, D.C.: Nov. 10, 2011); *Dodd-Frank Act Regulations: Agencies' Efforts to Analyze and Coordinate Their Rules*, GAO-13-101 (Washington, D.C.: Dec. 18, 2012); and *Dodd-Frank Regulations: Agencies Conducted Regulatory Analyses and Coordinated but Could Benefit from Additional Guidance on Major Rules*, GAO-14-67 (Washington, D.C.: Dec. 11, 2013).

[6]As defined by the Congressional Review Act, a major rule is one that the Office of Management and Budget 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; 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. Pub. L. No. 104-121, tit. II, § 251, 110 Stat. 868 (1996) (codified at 5 U.S.C. § 804(2)).

[7]Section 619 of the Dodd-Frank Act, "Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds" (also known as the Volcker rule), prohibits banking entities from engaging in proprietary trading, subject to certain exceptions. Pub. L. No. 111-203, § 619, 124 Stat. 1376, 1620 (2010). Under the Volcker rule, proprietary trading means engaging as a principal for the trading account of a banking entity or nonbank financial company supervised by the Federal Reserve in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument as determined by the federal banking agencies, Commodity Futures Trading Commission (CFTC), or the Securities and Exchange Commission (SEC). Title VII of the Dodd-Frank Act establishes a new regulatory framework for swaps to reduce risk, increase transparency, and promote market integrity in swaps markets. A swap is a type of derivative that involves an ongoing exchange of one or more assets, liabilities, or payments for a specified period. Financial and nonfinancial firms use swaps and other over-the-counter derivatives to hedge risk, or speculate, or for other purposes. In early 2014, the Board of Governors of the Federal Reserve System (Federal Reserve), CFTC, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and SEC, finalized their rules implementing section 619, and in 2013 and 2014 CFTC, the Federal Reserve, and SEC released rules, proposed rules, and guidance related to swaps.

To examine agencies' regulatory analyses and coordination, we focused on the 54 rules that became effective from July 23, 2013, through July 22, 2014. To identify the rules, we used a website maintained by the Federal Reserve Bank of St. Louis that tracks Dodd-Frank Act regulations. We corroborated the data with financial regulators' staff—CFPB, Board of Governors of the Federal Reserve (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC)—and the Department of the Treasury (Treasury). We also asked these staff to identify any other rulemaking that should be included. For the analyses, we reviewed federal statutes, GAO studies, *Federal Register* releases, and other material. To examine coordination, we reviewed the Dodd-Frank Act, *Federal Register* releases, regulators' documents, and GAO reports. We also interviewed officials from the financial regulators and Treasury, a nongeneralizable sample of market participants and industry associations, and selected foreign regulators. We identified market participants, industry associations, and foreign regulators that showed the most interest in these rulemakings, as measured by comments submitted during the rulemaking process. We examined the development and implementation of the Volcker rule regulations and swaps rules in depth by reviewing the *Federal Register* releases of the proposed and final rules and interviewing regulatory officials to document the agencies' coordination or consultation with other U.S. or foreign regulators. We focused on the Volcker rule regulations and swaps rules because the former required interagency coordination in drafting, while the latter addresses an issue of interest to domestic and foreign regulators.

Finally, to analyze the impact of the Dodd-Frank Act, we updated several indicators developed in our prior reports using data through the second quarter of 2014.[8] We updated indicators monitoring changes in certain characteristics of systemically important financial institutions (SIFI) and our econometric analysis estimating changes in the (1) cost of credit

[8]See GAO-13-101 and GAO-14-67.

provided by bank SIFIs and (2) safety and soundness of bank SIFIs.[9] We focused on SIFIs because some provisions of the act and related rules may result in adjustments to the size, interconnectedness, complexity, leverage, or liquidity of SIFIs over time. We also updated our indicators monitoring the extent to which certain swap reforms are consistent with the act's goals of reducing risk.[10] For parts of our methodology involving the analysis of computer-processed data from the Federal Reserve Bank of Chicago, the Federal Reserve, the National Information Center, and the Bureau of Economic Analysis, we assessed the reliability of these data by reviewing relevant documentation and corresponding with Federal Reserve staff, and we determined they were sufficiently reliable for our purposes—monitoring changes in SIFI characteristics, estimating changes in the cost of credit bank SIFIs provided and their safety and soundness, and assessing the amount of margin collateral over-the-counter derivatives counterparties used. See appendix I for more information.

We conducted this performance audit from January 2014 to December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The missions and basic functions of the financial regulators, the requirements for regulatory analyses in federal rulemakings, and specific Dodd-Frank Act rulemaking coordination requirements are described in this section of the report.

[9]The Dodd-Frank Act does not use the term "systemically important financial institution." Academics and other experts commonly use this term to refer to bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by FSOC for Federal Reserve supervision and subject to enhanced prudential standards under the Dodd-Frank Act. For this report, we refer to these bank and nonbank financial companies as bank systemically important financial institutions (bank SIFI) and nonbank systemically important financial institutions (nonbank SIFI), respectively. We also refer to nonbank SIFIs and bank SIFIs collectively as SIFIs when appropriate.

[10] Swaps include interest rate swaps, commodity-based swaps, and broad-based credit default swaps. Security-based swaps include single-name and narrow-based credit default swaps and equity-based swaps.

Prudential Regulators

In the banking industry, the specific regulatory configuration generally depends on the type of charter the banking institution chooses. Depository institution charter types include

- commercial banks, which originally focused on the banking needs of businesses but over time have broadened their services;
- thrifts, which include savings banks, savings associations, and savings and loans and were originally created to serve the needs—particularly the mortgage needs—of those not served by commercial banks; and
- credit unions, which are member-owned cooperatives run by member-elected boards with an historical emphasis on serving people of modest means.

All depository institutions that have federal deposit insurance have a federal prudential regulator, which generally may issue regulations and take enforcement actions against institutions within its jurisdiction. These regulators also oversee large depository institutions for safety and soundness purposes and compliance with other laws and regulations. Holding companies that own or control a bank or thrift are subject to Federal Reserve supervision. The Bank Holding Company Act of 1956 and the Home Owners' Loan Act set forth regulatory frameworks for bank holding companies and savings and loan holding companies, respectively.[11] The Dodd-Frank Act made the Federal Reserve the regulator of savings and loan holding companies and amended the Home Owners' Loan Act and the Bank Holding Company Act to create certain similar requirements for bank and savings and loan holding companies.[12] The prudential regulators are identified in table 1.

[11]Bank Holding Company Act of 1956, Pub. L. No. 84-511, 70 Stat. 133 (codified as amended at 12 U.S.C. §§ 1841-1852); Home Owners' Loan Act, Pub. L. No. 73-43, 48 Stat. 128 (1933) (codified as amended at 12 U.S.C. §§ 1461-1470). Bank holding companies own or control a bank, as defined in the Bank Holding Company Act. 12 U.S.C. § 1841(a)(1),(c). Savings and loan holding companies directly or indirectly control a savings association. 12 U.S.C. § 1467a(a)(1)(D).

[12]For a more detailed discussion of the regulatory framework for bank holding companies and savings and loan holding companies, see GAO, *Bank Holding Company Act: Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions*, GAO-12-160 (Washington, D.C.: Jan. 19, 2012).

Table 1: Prudential Regulators and Their Basic Functions, as of November 2014

Agency	Basic function
Office of the Comptroller of the Currency	Charters and supervises national banks, federal savings associations (also known as federal thrifts), and federally chartered branches and agencies of foreign banks.
Board of Governors of the Federal Reserve System	Supervises state-chartered banks that opt to be members of the Federal Reserve System, bank and thrift holding companies, and the nondepository institution subsidiaries of those institutions, and nonbank financial companies designated as systemically important financial institutions by the Financial Stability Oversight Council.[a] Also supervises Edge corporations pursuant to the Edge Act and certain designated financial market utilities (such as a clearinghouse) pursuant to the Dodd-Frank Act.[b]
Federal Deposit Insurance Corporation	Supervises state-chartered banks that are not members of the Federal Reserve System, as well as state savings banks and thrifts; insures the deposits of all banks and thrifts that are approved for federal deposit insurance; resolves all failed insured banks and thrifts, if appointed receiver by the Secretary of the Treasury, and has authority to resolve certain large bank holding companies and nonbank financial companies.
National Credit Union Administration	Charters and supervises federally chartered credit unions and insures savings in federal and most state-chartered credit unions.

Source: GAO. | GAO-15-81

[a]The Dodd-Frank Act does not use the term "systemically important financial institution (SIFI)." This term is commonly used by academics and other experts to refer to bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by the Financial Stability Oversight Council for Federal Reserve supervision and enhanced prudential standards under the Dodd-Frank Act.

[b]Edge Act corporations are established as separate legal entities and may conduct a range of international banking and other financial activities in the United States. Pub. L. No. 66-106, 41 Stat. 378 (1919) (codified as amended at 12 U.S.C. § 611).

Securities and Futures Regulators

The securities and futures markets are regulated under a combination of self-regulation (subject to oversight by the appropriate federal regulator) and direct oversight by SEC and CFTC, respectively.[13] SEC regulates the securities markets, including participants such as securities exchanges, broker-dealers, investment companies, and certain investment advisers and municipal advisors.[14] SEC's mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. SEC also oversees self-regulatory organizations—including securities exchanges, clearing agencies, and the Financial Industry Regulatory Authority—that have responsibility for overseeing securities markets and

[13]State government entities also oversee certain securities activities.

[14]Some smaller investment advisers are regulated by state government entities.

their members; establishing the standards under which their members conduct business; monitoring business conduct; and bringing disciplinary actions against members for violating applicable federal statutes, SEC's rules, and their own rules.[15]

CFTC is the primary regulator of futures markets, including futures exchanges and intermediaries, such as futures commission merchants.[16] CFTC's mission is to protect market users and the public from fraud, manipulation, abusive practices, and systemic risk related to derivatives subject to the Commodity Exchange Act (CEA), and to foster open, competitive, and financially sound futures markets. CFTC oversees the registration of intermediaries and relies on self-regulatory organizations, including the futures exchanges and the National Futures Association, to establish and enforce rules governing member behavior. CFTC and SEC jointly regulate security futures, which generally refers to futures on single securities and narrow-based security indexes.

In addition, Title VII of the Dodd-Frank Act expands regulatory responsibilities for CFTC and SEC by establishing a new regulatory framework for swaps. The act authorizes CFTC to regulate swaps and SEC to regulate security-based swaps with the goals of reducing risk, increasing transparency, and promoting market integrity in the financial system. CFTC and SEC share authority over mixed swaps—security-based swaps that have a commodity component.

Consumer Financial Protection Bureau

The Dodd-Frank Act transferred consumer protection oversight and other authorities over certain consumer financial protection laws from multiple federal regulators to CFPB, creating a single federal entity to, among other things, ensure consistent enforcement of federal consumer financial

[15]In the securities markets, self-regulatory organizations, such as a national securities exchange or association, are regulators that have responsibility for much of the day-to-day oversight of the securities markets and broker-dealers under their jurisdiction.

[16]Futures commission merchants are individuals, associations, partnerships, corporations, and trusts that solicit or accept orders for the purchase or sale of a commodity for future delivery, among other products, on or subject to the rules of any exchange and that accept payment from or extend credit to those whose orders are accepted. 7 U.S.C. § 1a(28). Firms and individuals trading futures with the public or giving advice about futures trading must be registered with the National Futures Association, the self-regulatory organization for the U.S. futures industry.

laws.[17] The Dodd-Frank Act charged CFPB with the following responsibilities, among others:

- ensuring that consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
- ensuring that consumers are protected from unfair, deceptive, or abusive acts and practices, and from discrimination;
- monitoring compliance with federal consumer financial law and taking appropriate enforcement action to address violations;
- identifying and addressing outdated, unnecessary, or unduly burdensome regulations;
- ensuring that federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition;
- ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation; and
- conducting financial education programs.

Furthermore, the Dodd-Frank Act gave CFPB supervisory authority over certain nondepository institutions, including certain kinds of mortgage market participants, private student loan lenders, and payday loan lenders.[18]

Financial Stability Oversight Council

The Dodd-Frank Act established the Financial Stability Oversight Council (FSOC) to identify risks to the financial stability of the United States, promote market discipline, and respond to emerging threats to the

[17]These authorities transferred on July 21, 2011. CFPB has primary supervision and enforcement authority for federal consumer protection laws for depository institutions with more than $10 billion in assets and their affiliates. The federal prudential regulators—the Federal Reserve, OCC, FDIC, and NCUA—which previously supervised and examined all depository institutions and credit unions for consumer protection, also retain supervision and enforcement authority for certain consumer protection laws for those depository institutions with more than $10 billion in assets and their affiliates, and they have primary supervision and enforcement authority for consumer financial laws for institutions that have $10 billion or less in assets.

[18]The Dodd-Frank Act also gave CFPB supervisory authority over “larger participants” in markets for consumer financial products or services as CFPB defines by rule. Pub. L. No. 111-203, § 1024(a)(1)(B), 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C § 5514(a)(1)(B). Title X also contains additional authorities and responsibilities for CFPB that are not outlined here.

stability of the U.S. financial system. FSOC consists of 10 voting and 5 nonvoting members and is chaired by the Secretary of the Treasury. The 10 voting members are the heads of Treasury, CFPB, CFTC, FDIC, the Federal Reserve, the Federal Housing Finance Agency, NCUA, OCC, and SEC, and an independent member with insurance expertise. The Dodd-Frank Act also established the Office of Financial Research in Treasury to support FSOC and its member agencies by improving the quality, transparency, and accessibility of financial data and information; conducting and sponsoring research related to financial stability; and promoting best practices in risk management.[19] The director of the Office of Financial Research is a nonvoting member of FSOC, along with the director of the Federal Insurance Office, and designated state insurance, securities, and banking regulators.

Regulatory Analyses in Federal Rulemaking

Several regulatory analyses may apply to independent regulators, including the financial regulators. The regulators are subject to compliance with various requirements as part of their rulemakings, such as those in the Paperwork Reduction Act of 1995 (PRA), the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, and the Congressional Review Act (CRA).

- PRA requires agencies, including independent financial regulators, to minimize the paperwork burden of their rulemaking and evaluate whether a proposed collection is necessary for the proper performance of the functions of the agency. Under PRA, agencies include this analysis in the notice of proposed rulemaking and obtain approval for an information collection from the Office of Management and Budget (OMB).[20]

[19]§§ 153-154, 124 Stat. at 1415-18 (codified at 12 U.S.C. §§ 5343-5344). For additional information on FSOC and the Office of Financial Research see GAO, *Financial Stability Oversight Council: Status of Efforts to Improve Transparency, Accountability, and Collaboration*, GAO-14-873T (Washington, D.C.: Sept. 17, 2014) and *Financial Stability: New Council and Research Office Should Strengthen the Accountability and Transparency of Their Decisions*, GAO-12-886 (Washington, D.C.: Sept. 11, 2012).

[20]Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (codified as amended at 44 U.S.C. §§ 3501-3520).

- RFA requires that federal agencies consider the impact of certain regulations they issue on small entities and alternatives to lessen regulatory burden on small entities.[21] PRA and RFA also require agencies, including financial regulators, to assess various impacts and costs, respectively, of their rules. However, RFA, like the PRA, does not require the agencies to conduct formal benefit and cost analyses.

- The Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, includes judicial review of compliance with RFA and requires agencies, including financial regulators, to develop one or more small entity compliance guides for each final rule or group of related final rules for which the agency must prepare a regulatory flexibility analysis.[22] In addition, the act requires the CFPB when preparing an initial regulatory flexibility analysis in connection with a proposed rule, to gather recommendations and advice from representatives of small business entities about any projected increase in the cost of credit for small entities and any significant alternatives to the proposed rule.

- Under CRA, before rules can take effect, agencies (including financial regulators) must submit their rules to Congress and the Comptroller

[21]Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified as amended at 5 U.S.C. §§ 601-612). Under RFA, agencies, including financial regulators, generally must prepare a regulatory flexibility analysis in connection with certain proposed and final rules, unless the head of the issuing agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

[22]Pub. L. No. 104-121, tit. II, 110 Stat. 857 (codified at 5 U.S.C. §§ 801-808, 15 U.S.C. § 657).

General, and rules deemed major by OMB generally may not become effective until 60 days after the rules are submitted.[23]

In addition to these requirements, authorizing or other statutes require certain financial regulators to consider specific benefits, costs, and impacts of their rulemakings (see table 2). However, like PRA and RFA, none of these authorizing statutes prescribe benefit and cost analysis that requires the identification and assessment of alternatives.

Table 2: Authorizing and Other Statutes and Their Implications for Cost-Benefit Considerations

Authorizing or other statute	Implications for agency's consideration of costs and benefits
Commodity Exchange Act	CFTC must consider the costs and benefits of its action in light of (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk-management practices; and (5) other public interest considerations.[a]
Consumer Financial Protection Act of 2010 (Title X of the Dodd-Frank Act)	CFPB must consider the potential costs and benefits of its rules to consumers and entities that offer or provide consumer financial products and services, including potential reductions in consumer access to products or services.[b] CFPB also must consider the impact of proposed rules on insured depository institutions and credit unions with $10 billion or less in assets, and the impacts on consumers in rural areas.[c] When an initial RFA analysis is required, CFPB must describe any projected increase in the cost of credit for small entities, any significant alternatives which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities, and any advice and recommendations of small entity representatives related to such projected increase or significant alternatives.[d]
National Securities Markets Improvement Act of 1996 and the Securities Exchange Act of 1934, as amended	Whenever SEC is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the agency must consider, in addition to the protection of investors, whether a rule will promote efficiency, competition, and capital formation.[e] SEC also must consider the impact that any rule promulgated under the Securities Exchange Act of 1934 would have on competition.[f]

[23]Pub. L. No. 104-121, tit. II, § 251, 110 Stat. 868 (1996) (codified at 5 U.S.C. §§ 801-808). CRA requires agencies to submit to both houses of Congress and the Comptroller General, before rules can become effective, a report containing (i) a copy of the rule, (ii) a concise general statement relating to the rule, including whether it is a major rule, and (iii) the proposed effective date of the rule. 5 U.S.C. § 801(a)(1)(A). Rules not classified as major take effect as otherwise provided by law after submission to Congress, while rules classified as major take effect on the later of 60 days after Congress receives the rule report, or 60 days after the rule is published in the *Federal Register*, as long as Congress does not pass a joint resolution of disapproval. 5 U.S.C. § 801(a)(3),(4). CRA also mandates that we provide a report to Congress for each major rule that includes an assessment of an agency's compliance with the CRA process. We do not analyze or comment on the substance or quality of rulemaking. We must report to each house of Congress by the end of 15 calendar days after a rule's submission or publication date. 5 U.S.C. § 801(a)(2)(A).

Authorizing or other statute	Implications for agency's consideration of costs and benefits
Electronic Fund Transfer Act, as amended by the Dodd-Frank Act regarding reasonable fees and rules for payment card transactions	The Federal Reserve must prepare an analysis of the economic impact of regulations that considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers.[g] The analysis must address the extent to which additional paperwork would be required, the effects on competition among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers.
The Riegle Community Development and Regulatory Improvement Act of 1994	Each federal banking agency, when determining the effective date and administrative compliance requirements of new regulations on insured depository institutions, must consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens the regulations would place on insured depository institutions or customers of insured depository institutions and the benefits of such regulations.[h]

Source: GAO. | GAO-15-81

[a]Pub. L. No. 67-331, §15(a), 42 Stat. 998 (1922) (codified as amended at 7 U.S.C. § 19(a)).

[b]Pub. L. No. 111-203, § 1022(b)(2)(A)(i), 124 Stat. 1376, 1980-81 (codified at 12 U.S.C. § 5512(b)(2)(A)(i)).

[c]§ 1022(b)(2)(A)(ii), 124 Stat. at 1980-81 (codified at 12 U.S.C. § 5512(b)(2)(A)(ii)).

[d]§ 1100G, 124 Stat. at 2112 (codified at 5 U.S.C. § 603(d)) (amending the RFA).

[e]Pub. L. No. 104-290, § 106(a)-(c), 110 Stat. 3416, 3424 (1996) (codified as amended at 15 U.S.C. §§ 77b(b), 78c(f), 80a-2(c)). Conforming amendments to the Investment Advisers Act of 1940 were made in section 224 of the Gramm Leach Bliley Act. Pub. L. No. 106-102, § 224, 113 Stat. 1338, 1402 (1999) (codified at 15 U.S.C. § 80b-2(c)).

[f]Pub. L. No. 73-291, § 23(a)(2), 48 Stat. 881 (codified as amended at 15 U.S.C. § 78w(a)(2)).

[g]15 U.S.C. § 1693b(a)(2)(B).

[h]Pub. L. No. 103-325, § 302, 108 Stat. 2160, 2214 (codified at 12 U.S.C. § 4802).

In contrast, E.O. 12866, supplemented by E.O. 13563, requires executive agencies (which do not include independent regulators such as financial regulators), to the extent permitted by law and where applicable, to provide more formal cost-benefit analyses that (1) assess costs and benefits of available regulatory alternatives and (2) include both quantifiable and qualitative measures of benefits and costs in their analysis, recognizing that some costs and benefits are difficult to quantify. Such analysis, according to OMB, can enable an agency to learn if the benefits of a rule were likely to justify the costs and discover which possible alternatives would yield the greatest net benefit or be most cost-effective.

In 2003, OMB issued Circular A-4 to provide guidance to executive agencies on developing regulatory analysis as required by E.O. 12866.[24] The circular defines good regulatory analysis as including a statement of the need for the proposed regulation, an assessment of alternatives, and an evaluation of the costs and benefits of the proposed regulation and the alternatives. It also standardizes the way costs and benefits of regulatory actions should be measured and reported. FSOC and Treasury, which are not financial regulators, are subject to E.O. 12866 and Circular A-4. However, as we have reported, some independent agencies consult Circular A-4 and some have revised their internal rulemaking guidance to more fully incorporate circular guidance as we had recommended.[25]

Interagency Coordination Requirements in Dodd-Frank Act Rulemakings

Interagency coordination during the rulemaking process occurs when two or more regulators engage in activities together. Effective coordination can help regulators minimize or eliminate staff and industry burden, administrative costs, conflicting regulations, unintended consequences, and uncertainty among consumers and markets. The Dodd-Frank Act imposes interagency coordination or consultation requirements and responsibilities on regulators or in connection with certain rules. For example:

- Section 619, commonly known as the Volcker rule, directed federal banking, securities, and futures regulators (Federal Reserve, OCC, FDIC, SEC, and CFTC) to adopt rules prohibiting banking entities from engaging in proprietary trading and from investing in or sponsoring hedge funds and private equity funds, subject to certain exceptions. In preparation for the rulemaking process, the act required FSOC to conduct a study and make recommendations to the agencies on effectively implementing section 619. The act further directed the agencies to consider the findings as they developed and adopted the rule. Under the act, the banking regulators, SEC, and CFTC were required to consult and coordinate with each other, as appropriate, so that, to the extent possible, the rule was comparable

[24]OMB, *Circular A-4: Regulatory Analysis* (Washington, D.C.: Sept. 17, 2003). Circular A-4 replaced OMB's best practices guidance issued in 1996 and 2000. E.O. 13579 encourages independent regulatory agencies to comply with E.O. 13563. E.O. 13579, 76 Fed. Reg. 41,587 (July 11, 2011).

[25]Independent regulatory agencies are defined by 44 U.S.C. § 3502(5), which the Dodd-Frank Act revised to include OCC, CFPB, and the Office of Financial Research.

across agencies and provided for consistent application and implementation. The act named the Treasury Secretary, as chair of FSOC, responsible for the agencies’ coordination on the rulemaking.

- Under Title VII, SEC and CFTC must coordinate and consult with each other and prudential regulators (for the purposes of Title VII, these regulators are the Federal Reserve, OCC, FDIC, Farm Credit Administration, and Federal Housing Finance Agency), to the extent possible, before starting a rulemaking or issuing an order on swaps, security-based swaps, swap entities, or security-based swap entities.[26] This is to ensure regulatory consistency and comparability across the rules or orders, to the extent possible. Title VII also directs CFTC, SEC, and the prudential regulators, as appropriate, to coordinate with foreign regulators on establishing consistent international standards regarding the regulation of swaps, security-based swaps, swap entities, and security-based swap entities. In addition, the Dodd-Frank Act requires SEC and CFTC in consultation with the Federal Reserve to jointly adopt certain rules under Title VII, and if Title VII requires CFTC and SEC issue joint regulations to implement a provision, any guidance or interpretation on the provision is effective only if issued jointly and after consultation with the Federal Reserve.
- Under section 1022, before proposing a rule and during the comment process, CFPB must consult with the appropriate prudential regulators or other federal agencies on consistency with prudential, market, or systemic objectives administered by such agencies.

[26]Section 712(a)(4) of the Dodd-Frank Act exempts from this requirement orders issued in connection with or arising from a violation of any provision of the CEA or the securities laws, or in certain administrative hearings.

Regulators Conducted Required Analyses but Various Factors Limited the Scope of These Analyses

Financial regulators conducted required regulatory analyses, including consideration of costs and benefits. According to the regulators, they have asked their economists to play a central role in analyzing costs and benefits in the Dodd-Frank Act rulemakings. Regulators also reported that their cost-benefit analyses benefitted from following OMB's Circular A-4 guidance, but they and academics noted they were constrained by several factors, such as limited data or data availability and difficulties modeling and quantifying costs and benefits. We, and others, have recommended options and methods to address these challenges.

Regulators Conducted Required Analyses for Dodd-Frank Act Rulemakings

Of the 54 Dodd-Frank Act rules in our scope, 38 of those were substantive, meaning they were generally subject to public notice and comment under APA and therefore required some form of regulatory analysis.[27] These rules were issued individually or jointly by the financial regulators, the Federal Housing Finance Agency, and the Department of Housing and Urban Development. See appendix II for more information.

In examining the regulatory analyses for the 38 regulations, we found the following:

- **Regulators conducted the required regulatory analyses.** All of the regulators we reviewed conducted regulatory analyses pursuant to RFA for their Dodd-Frank Act rules, when required or applicable. In addition, all but one regulator also conducted the analyses required under PRA, and in that case the regulator relied on information collected by other regulators. For purposes of certain rulemakings, regulators determined that the provisions in those rulemakings are not covered by the PRA and RFA—such as a rulemaking not containing any collections of information pursuant to PRA. In addition, regulators conducted required regulatory analyses pursuant to other statutes,

[27] In this report, we use the terms "rules," "regulations," or "rulemakings" generally to refer to *Federal Register* notices of agency action pursuant to the Dodd-Frank Act, including those that are final or interim final.

such as the Unfunded Mandates Reform Act of 1995 and Small Business Regulatory Enforcement Fairness Act of 1996.[28]

- **Regulators issued 15 major rules.** Of the 38 rules, OMB identified 15 as major rules under CRA. Specifically, the Federal Reserve issued one major rule; FDIC issued one major rule; CFPB issued three major rules; CFTC issued four major rules; SEC issued three major rules; the Federal Reserve and OCC jointly issued one major rule; CFTC, the Federal Reserve, FDIC, OCC, and SEC jointly issued one major rule; and FDIC, the Federal Reserve, OCC, and SEC jointly issued one major rule.

- **In the 15 major rulemakings, the extent to which regulators addressed the key elements in OMB's Circular A-4 varied.** Based on our analysis of the 15 major rules, the regulators addressed many of the OMB guidance's key elements. For example, all the rulemakings identified the problem to be addressed. In 13 of the rulemakings, regulators considered potential benefits and costs, and the regulators asked for and received public comments on alternatives in all of the rulemakings. In 12 rulemakings, regulators analyzed the costs and benefits of the rules based on public comments and other information. However, based on our analysis, regulators were less likely to identify regulatory alternative approaches and baselines. For example, in 10 rulemakings, the regulators identified regulatory alternative approaches that they considered. In 6 rulemakings, regulators explicitly identified the baseline against which they assessed costs and benefits and in the other rulemakings, the regulators implicitly identified the baseline.[29]

[28]The Unfunded Mandates Reform Act of 1995 was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. The act applies to proposed federal mandates in both legislation and regulations, but it does not apply to rules published by independent regulatory agencies, such as the financial regulators. The act generally requires federal agencies to prepare a written statement containing a "qualitative and quantitative assessment of the anticipated costs and benefits" for any rule that includes a federal mandate that may result in the expenditure of $100 million or more in any one year by state, local, and tribal governments in the aggregate, or by the private sector.

[29]Circular A-4, for example, defines a baseline as the best assessment of the way the world should look absent the proposed action.

Regulators Have Relied on Economists to Analyze Rulemakings

Financial regulators told us that they have asked their economists to play a central role in analyzing costs and benefits of proposed Dodd-Frank Act rules. At some agencies, the economists tend to conduct analyses, such as those required by PRA and RFA, and provide informal assistance, such as discussing alternatives and drafts with other agencies and within their own agency, reviewing comment letters, and revising proposals in response to such letters. Staff from the financial regulators offered the following example to illustrate how their economists were involved in the rulemaking process. CFTC, CFPB, FDIC, Federal Reserve, OCC, and SEC staff told us that throughout Dodd-Frank Act rulemakings, their economists worked with other regulator staff, such as accountants, market specialists, and counsel to help draft the rulemakings.[30] For example, CFTC staff added that beginning with their early rulemakings, they have increased efforts to involve their economists, and CFPB staff said integrating economists with regulatory attorneys and market experts in rulemaking analyses helped them more accurately assess rules' costs and benefits. OCC and SEC staff said their economists helped identify the economic effects of proposed rules. CFTC staff added that their economists determined baselines, identified alternatives and trade-offs, and quantified costs and benefits. FDIC staff said their economists considered requirements of APA and the Dodd-Frank Act, and OCC staff said their economists actively evaluated comments on the capital markets. SEC staff noted that their economists' involvement in the rulemaking process from the beginning has helped strengthen their rules,

[30]NCUA staff said that over the period of this review, the agency's economists' involvement in Dodd-Frank Act rulemakings was limited to conducting PRA analysis and did not involve analysis of costs and benefits.

address congressional intent, and produce rules more likely to withstand judicial challenges.[31]

Several Factors Limit Regulators' Analyses

According to the financial regulators' officials, some of the regulatory agencies' cost-benefit analyses of proposed rules have benefited from OMB's Circular A-4 guidance, even if it has not always been applicable. As they and academics note, limited data or data availability and the difficulties of modeling and quantifying costs and benefits have limited their analyses, but we (and others) have recommended strategies to address these challenges.

Circular A-4 Provides Useful Principles and Practices but May Not Always Be Applicable

To analyze costs and benefits (economic trade-offs) of rulemakings, financial regulators often have turned to OMB's Circular A-4 for guidance. We previously reported on the usefulness of this guidance, including earlier this year when staff from nearly every agency with whom we talked said that Circular A-4 is a useful guiding framework and a source of general principles and good practices.[32] The financial regulators also have found the guidance helpful. For example, CFPB staff said that Circular A-4 represents standards and best practices, is a useful starting point, is thought-provoking, and alerts the agency to analytical pitfalls. Similarly, SEC staff said that their agency looks to Circular A-4 and other OMB guidance as providing guidelines, information, and suggestions, which in turn are reflected in their economic analysis guidance—we have

[31]SEC staff said that in March 2012, in part in response to court decisions and GAO and OIG reports that raised questions about and recommended improvements to various components of SEC's economic analysis in its rulemaking, SEC staff issued "Current Guidance on Economic Analysis in SEC Rulemakings." Staff added that the SEC Chairman has directed the staff to follow this rulemaking guidance, which is publicly available on the SEC's website at http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.shtml. SEC staff told us that their guidance for economic analysis is broadly written and has a flexible framework, which they said includes provisions for the involvement of economists starting at the earliest stage of the rulemaking process. They added that in August 2013 and March 2014 they provided additional information to staff on procedures and implementation of the guidance. They also told us that from 2011 to 2014, the agency doubled its complement of staff economists and expected to add more in the remaining months of fiscal year 2014.

[32]See GAO, *Federal Rulemaking: Agencies Included Key Elements of Cost-Benefit Analysis, but Explanations of Regulations' Significance Could Be More Transparent*, GAO-14-714 (Washington, D.C.: Sept.11, 2014).

previously noted that SEC's 2012 economic guidance closely follows EO 12,866 and Circular A-4.

However, financial regulators noted that Circular A-4 may not always be applicable for financial services regulations or may conflict with statutory requirements and thus have supplemented it with their own guidance. For example, staff at one regulator said they would have difficulty executing formulas suggested by Circular A-4 because the information the formulas require is not readily available. In addition, CFTC staff said they follow Circular A-4 guidance, but where it conflicts with the analytic approach required by CEA 15(a), they will follow the CEA requirements. For example, according to these staff, when CFTC implements a statute through the rulemaking process, the regulator may begin its regulatory analysis with a baseline different from that called for in Circular A-4 (which is the status quo). Staff at another regulator said that they were not clear how parts of Circular A-4 relating to uncertainty analysis, risk-analysis, and probability-estimate requirements (which are used to test physical phenomena and may be better suited for engineering-type work) apply to their analyses. To address these differences and concerns, financial regulator staff said that they supplement the Circular A-4 guidance with their own guidance, as we have recommended, and policies for analyzing costs and benefits.[33] In addition, staff from one regulator told us they follow statutory requirements, executive orders, and best practices or direction provided by agency economists or attorneys, GAO, and others.

Regulators May Lessen the Effects of Limited Data by Using Multiple Sources of Information

Federal financial regulators have limited data that may restrict their efforts to quantify and assign monetary values to costs and benefits, but by drawing on several sources, such as public comments on proposed rulemakings, surveillance and enforcement data, data from other regulators, and commercial data, they are able to more effectively consider the costs and benefits of rulemakings.

[33]See GAO-14-67 for GAO recommendations. OCC, CFTC, SEC, and FDIC updated their written guidance or procedures for economic analysis in 2011, 2012, 2012, and 2013, respectively, but they and other regulators with whom we talked have not recently made any significant changes to their process for preparing economic analyses. One regulator added that its processes were currently under review. SEC clarified that its guidance is broadly written; thus, the regulator does not need to update the guidance but instead provides additional information on how it implements the guidance (which staff said was done in 2013 and 2014).

- **Data and analyses from public comments may inform regulators but such information may be limited.** Public comments obtained during rulemaking may provide information to regulators. Although regulators often rely on information obtained through the review and comment process of rulemaking, regulator staff said such information may or may not be usable. Regulator staff told us they may draft part of a proposed rule, including regulatory alternatives to the proposed rule, as a hypothesis to elicit targeted comments. For example, staff of two regulators said that they consider alternatives submitted in public comments to a proposed rule and, at times, change the proposed rule if appropriate based on these comments. Another regulator's staff said they may rely on cost information in comment letters, but at times the information is not sufficiently detailed to provide a basis for meaningful cost estimates. Similarly, regulator staff said that they try to replicate analyses received in comment letters, but added this was not always possible. Regulator staff also told us that some comments provided during the rulemaking process may include economic analyses, which regulators may include in drafting final rules, depending on the quality of the information and the ability of the regulator to verify it. For example, financial regulators said they obtained valuable information on specific aspects of the proposed Volcker rule regulations through the comment process (see text box).

- **Data from bank supervision, market surveillance, and enforcement activities may be detailed and reliable but not always available or appropriate.** For example, Federal Reserve staff said they usually obtain most of the data they need to consider costs and benefits from the regulator's Y9-C reports.[34] SEC staff said they used the regulator's enforcement data to help establish the baseline for their bad actor rulemaking and data that may also be used for purposes related to surveillance for nearly all the Title VII rulemakings.[35] However, they added that in certain cases the data

[34]Form Y9-C reports are consolidated financial statements submitted by holding companies with consolidated assets of $500 million or more. Each report includes basic financial data (for example, balance sheet and income statement) from a holding company (bank, savings and loan, or securities) and is used to assess the financial condition of the holding company.

may not be representative of the entire market if anecdotal or based on highly targeted oversight. Regulators' internal data more generally may not be sufficient or appropriate for the analyses needed for a particular rulemaking, and as such, the regulators also rely on data from other sources.

- **Data from other regulators, commercial sources, and the cost-benefit literature may fill gaps but not all of them.** Regulators told us they seek to use data from other governmental sources, although there are limitations in doing so. For example, Federal Reserve staff told us they used Federal Housing Finance Agency data on Fannie Mae and Freddie Mac (government-sponsored enterprises) to understand the market context of the Appraisals for Higher-Priced Mortgage Loans joint rulemaking.[36] However, according to the staff, the requested data did not capture all aspects of the market they needed for the rulemaking, namely information on smaller, rural, nonbank lenders. To fill the gaps, additional data were obtained from CFPB. Similarly, commercial data can help regulators estimate certain costs, but they are not always complete. For example, CFPB staff said they have found commercial data may not have the specificity the regulator needs to analyze a given proposed rule's impact. For example, the data may not contain bank points and fees for certain types of loans. To supplement this information, some regulator staff said they review the works of other governmental and nongovernmental sources. Staff at several regulators said that when they cannot quantify costs and benefits, they may review regulator and academic literature and try to quantify it using impact studies, such as those from the Bank of International Settlements, and hold conversations with experts, consumer groups, and others outside the regulator. This approach may be reasonable given the limitations of the available data.

[35]"Disqualification of Felons and Other 'Bad Actors' from Rule 506 Offerings," 78 Fed. Reg. 44,730 (July 24, 2013), implements section 926 of the Dodd-Frank Act, which requires SEC to adopt a rule that disqualifies securities offerings involving certain felons and other bad actors from reliance on rule 506 of Regulation D. Regulation D allows some businesses to offer and sell their securities without having to register the offer and sale of securities with SEC.

[36]Appraisals for Higher-Priced Mortgage Loans, 78 Fed. Reg. 10,368 (Feb. 13, 2013). Fannie Mae and Freddie Mac are for-profit, shareholder-owned corporations and share the same primary mission to stabilize and assist the U.S. secondary mortgage market and facilitate the flow of mortgage credit. The Federal Housing Finance Agency is responsible for the safety and soundness and housing mission oversight of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System (the other housing-related, government-sponsored enterprise).

- **Data from individual firms may be targeted, detailed, and difficult to obtain.** Data from individual firms may contain the details regulators need to estimate the benefits and costs of proposed rules, but regulators have limited ability to collect such data, industry may be reluctant to provide it for competitive reasons, and it may not be in the format needed for analysis. For example, staff from financial regulators frequently identified PRA as a barrier to obtaining information from individual firms. Under PRA, agencies cannot solicit information from more than nine firms without triggering certain requirements, such as a notice and comment period and OMB review. According to the staff from one regulator, such requirements add time and costs to the rulemaking process. Staff at another regulator said that PRA constrains their ability to collect needed data and discourages them from efficiently collecting data through surveys or other methods. They added that without the data, their analyses of costs and benefits are also constrained. Also, as one academic told us, industry may not want to provide data, because some firms perceived provision of proprietary data to regulators as risky. Regulators have told us that when they ask business for data through the rulemaking process they often get data that are too incomplete to use for analysis. Staff from one regulator said that data they collect from firms may be incomplete and staff from another regulator said they cannot use the data to analyze costs and benefits of a proposed rule. Because of these concerns and experiences, regulatory staff told us that they avoid asking firms for certain data, look to other sources for the data (such as those just discussed), or only seek data from nine or fewer firms.

Volcker rule

When drafting the final Volcker rule regulations, regulators, which were not required by section 619 of the Dodd-Frank Act to conduct a cost-benefit analysis, did not consistently conduct such an analysis. One regulator prepared such an analysis, but did not publish the analysis in the final rule *Federal Register* notice. Regulator staff told us they considered costs and benefits of the final rule including some identified in comment letters submitted in response to the publication of the proposed rule. For example, OCC staff said comments from banks, trade associations, bond dealers, pension funds, and others included information and in some cases economic studies with various estimates. Agency staff also indicated that they used academic literature and internal analysis to prepare their analysis of the final rules issued to implement the Volcker rule. According to OCC staff, they found some comments useful because they raised issues they had not considered in rule development and analysis. However, these staff also said that some estimates submitted by those who commented were based on interpretations and assumptions that were not applicable to the final rule (which changed from proposed to final). FDIC, the Federal Reserve, and OCC also noted that comments on the proposed rule led regulators to reduce the number of metrics (quantitative measures a banking entity must report to a regulator for each of its trading desks engaged in covered trading activities, such as risk and position limits and usage) in the rule. FDIC staff found several comments that included full cost-benefit analyses to be robust in assessing the impact of the proposal on the economy and competitiveness.

Source: GAO analysis. | GAO-15-81

Various Limitations Affect Regulators' Ability to Empirically Analyze Benefits and Costs

According to financial regulators and academics with whom we talked, regulators' analyses of the economic trade-offs of Dodd-Frank Act-related rulemakings have been limited because empirically based cost-benefit analyses of financial markets have been limited. They said the analytical difficulties occurred for several reasons.

- **Concepts are complex, thus challenging to define and model.** Regulators may begin their analysis of a rulemaking by identifying or modeling market failure(s) that precipitated the rulemaking. Subsequently, where feasible, they may then try to develop more complex models to quantify costs and benefits, which may improve the transparency of an analysis. However, quantification is not always feasible in financial services rulemakings. This is especially true for rulemakings addressing market stability or systemic risk, complex concepts that are not well defined or easily modeled. (Accurate and reliable models allow for a more accurate identification of costs, benefits, and risks for a particular rulemaking.)

  The concepts are difficult to define for several reasons. First, compared with other areas of federal activity in which formal cost-benefit analysis has been required for years and strategies for estimating costs and benefits have benefitted from research, several academics told us that there has been a dearth of research on how to do cost-benefit analysis in financial services rulemaking. In their view, this has meant that the practice of such analysis has been challenging. Second, it is inherently challenging for a regulator to identify and address certain sources of systemic risk.[37] For example, while asset price bubbles often become clear in hindsight, during the time when such risks appear to be building, policymakers may disagree if any intervention is warranted. If sources of systemic risks are not well identified and defined, quantification of the benefits and costs of addressing these risks is not possible. It is only since the Dodd-Frank Act that financial regulators have focused greater attention on market stability and systemic risk, rather than just on individual financial firms. Third, regulator staff told us that the costs and benefits of financial services regulations can be diffuse across markets. For example, to understand the cost of a rulemaking that lowers demand for an institution's lending program, the regulator also might need to consider how lower demand could affect other institutional activities, such as savings and lending rates, or overall economic activity.

The complexity of empirically based cost-benefit analyses in such rulemakings also makes it difficult to make the analyses accurate and reliable (ensure that they contain variables relevant for explaining the costs and benefits and exclude variables that are irrelevant). For example, staff from one regulator said that such modeling of the Volcker rule—which generally prohibits banking entities from engaging in proprietary trading—would be challenging and might have to include hundreds of variables because of the number of institutions involved and the complexity of financial markets. The regulators noted in the rulemaking that they were not required to analyze costs and benefits of this rule and, as staff from one regulator told us, in this case the costs and benefits would not be easily quantifiable. And for a regulator to fully assess the costs and benefits for a rulemaking that intends to address market stability and systemic risk, one academic suggested that regulators also consider how rules issued by other regulators in the same policy sphere affect that baseline.

- **Research methodologies do not necessarily address economic values and the distribution of risk.** Economists may more accurately estimate the economic effects of a rulemaking by using a

[37]GAO, *Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act*, GAO-13-180 (Washington, D.C.: Jan. 16, 2013).

methodology that includes economic values and the distribution of risk. Staff at one regulator said methodologies for areas such as health and safety contain well-defined concepts with standard valuations, such as the value of a statistical life. They suggested that methodologies in financial services regulation (such as eliciting values of willingness-to-pay for financial goods and services) are not as advanced. Regulators also said that it will be some time before they are able to empirically model risk distribution in financial services—for example, from major loss of access to the credit system or bankruptcy—that would allow them to analyze the effect of regulations designed to reduce those risks.

- **Flows of future costs and benefits can be uncertain and difficult to project.** To the extent future costs and benefits associated with a rulemaking flow differently over time, and because a dollar today could be worth more than a dollar in the future, the value of future costs and benefits may need to be discounted (determining the current value of future payments) to accurately estimate their current value. Generally, agencies can turn to OMB Circular No. A-94—Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs (originally issued in 1992)—for guidance on discounting measurable costs or benefits extending for 3 or more years into the future. But according to OMB, the discount rates published in guidance updates are to be used for lease-purchase and cost-effectiveness analysis, not regulatory analysis. Federal financial regulator staff told us they rarely use discounting to estimate current values of rulemakings' future costs and benefits. Staff at several regulators noted that initial compliance costs (for instance, changes to computer systems) often are higher than ongoing compliance costs, limiting the need for discounting. For instance, CFPB staff said that in implementing the Truth in Lending Act and the Real Estate Settlement Procedures Act, changes institutions will make to their systems may require high initial costs because of programming and training, but marginal future costs likely will be low. Similarly, OCC staff said that the impact of discounting would be limited because there were substantial Volcker rule compliance costs in year one. Staff at another regulator said they could not estimate the stream of benefits in dollars and therefore have relied on qualitative analyses of benefits, which allows them to discuss discounting patterns without performing formal discounting.

Although there may be benefits of empirically based cost-benefit analyses to financial services rulemakings, in practice, the use of such analysis has been limited—either because such analyses are not required or for the reasons discussed earlier.[38] The financial services literature and academics studying cost-benefit analysis in the financial services arena have discussed how regulators' cost-benefit analyses could be improved and identified potential means by which to achieve some improvements.

- In the near term, regulators could estimate costs and benefits using several methods, such as compiling findings from current studies and modeling relatively simple economic policy problems. For example, according to one academic, regulators could use meta-analysis to approximate difficult-to-estimate market risks without necessarily having to engage in original analysis. Meta-analysis is a statistical technique that combines findings from independent studies to develop a conclusion with a statistical power stronger than the analysis of any single study. Regulators also could begin by modeling rulemakings that address relatively simple economic policy problems that occur frequently and are ongoing (such as foreclosures or consumer misunderstanding of loan terms) rather than more complex problems such as systemic risk. With experience, regulators could refine their models and try modeling regulations aimed at addressing more sophisticated issues such as managing systemic risk.

- In the longer term, regulators could further develop guiding principles for regulatory analyses by learning from others and experience. Specifically, one academic suggested that regulators convene expert panels in environmental, finance, and health and safety to estimate probabilities not reliably estimated in other public sources and identify costs and benefits based on issues key to a regulation. Two other academics suggested that regulators borrow analytical practices from other regulators, such as the Financial Industry Regulatory Authority (FINRA). FINRA's models of significant rule proposals are to include issue or problem identification, objective of regulatory action, baseline or measurement of economic consequences, the proposed solution and how it addresses the problem, reasonable options, and anticipated economic impacts associated with the options, including costs and benefits of distributional impacts on efficiency, competition,

[38]We note financial regulators' limited use of cost-benefit analyses in GAO-14-67 and GAO-14-268.

and capital formation.[39] Finally, academics suggested that regulators learn from experience through retrospective reviews—analyses of costs and benefits after a rule had been implemented. Although information on the costs and benefits may be limited while regulators are developing a proposed rule—because they may be abstract or hypothetical at the time—such information may be more readily known and available after the rule's implementation. Conducting retrospective reviews could allow regulators to revisit their prospective analyses of rules in light of actual outcomes—and apply the lessons learned to other rules. In past work, we have noted the usefulness of retrospective reviews and identified procedures and practices that could be helpful in improving the effectiveness of retrospective reviews.[40] In particular, we concluded that regulators would be better prepared to undertake reviews if they had identified the needed data before beginning a review and, even better, before promulgating the rule. If regulators fail to plan for how they will measure the performance of their rules and how they will obtain the data they need to do so, they may be limited in their ability to accurately measure the progress or true effect of the regulations.

[39]In 2013, FINRA developed a framework for conducting economic impact assessments as part of the process it uses to develop rule proposals. According to FINRA, this framework is informed by guidance from SEC, OMB, international financial regulatory agencies, and academics. It will be used to make proposed rulemakings more transparent and accountable, and will present assumptions and risks about proposed rulemakings. It is based on three core principles (consulting with stakeholders, being clear about proposed rules' objectives and potential impacts, and obtaining supportive evidence where practicable, including FINRA's own data, additional data collect from firms, data requested through regulatory notices, and qualitative information).

[40]See GAO-12-151 and GAO, *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO-14-268 (Washington, D.C.: Apr. 11, 2014). We reported that retrospective analysis can help agencies evaluate how existing regulations work in practice. Agencies could use retrospective analysis to examine how existing regulations have contributed to specific policy goals, assess the effectiveness of their implementation, or reexamine their estimated benefits and costs based on actual performance and experience.

Regulators Continued to Coordinate on Rulemakings, but Swaps Reform Implementation Illustrates Challenges

Financial regulators coordinated on 34 of the 54 Dodd-Frank Act regulations that we reviewed. We did not find evidence of coordination for 20 of the 54 rules that we reviewed. For the 20, they were not required to coordinate by the Dodd-Frank Act. The Volcker rule regulations and swaps rules are among the 34 rules on which the regulators coordinated. The Volcker rule regulations illustrate the advantages of coordinating, as required, early in the rulemaking process and regulators' efforts to continue coordination as the rule is implemented. Swaps rules illustrate complications regulators may face when adopting and implementing rules that address overlapping regulatory spaces, domestically and internationally. We plan to continue monitoring these issues in future work.

Regulators Continued to Coordinate on Dodd-Frank Act Rulemakings

We found evidence that the rulemaking agency coordinated with at least one other agency for 34 of the 54 regulations that we reviewed, 7 of which were jointly issued (see app. III). Of the 34 regulations, we found that for 28 the rulemaking agency was required to coordinate on its rulemakings and on 6 the agency coordinated voluntarily. For instance, CFPB consulted with certain federal regulators and agencies as required in drafting the qualified mortgage standards rule.[41] In discussing this coordination requirement in its rule publication, CFPB said that it consulted, or offered to consult with, the prudential regulators, Federal Housing Finance Agency, Federal Trade Commission, the Department of Housing and Urban Development (HUD), SEC, and Treasury about, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies. CFPB also said it held discussions with or solicited feedback from the Department of Agriculture's Rural Housing Service, the Federal Housing Administration, and the Department of Veterans Affairs about the potential impacts of the final rule on those entities' loan programs. While CFPB said it consulted other regulators on some issues related to the rulemaking, it did not consult or coordinate with other regulators when drafting discussion of costs and benefits under section 1022 of the Dodd-Frank Act.

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[41]Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408 (Jan. 30, 2013).

Frank Act. For instance, CFTC staff told us that CFTC was not required to coordinate on the Swap Dealers and Major Swap Participants; Clerical or Ministerial Employees final rule. Though this rule implements Title VII of the Dodd-Frank Act, which requires the rulemaking agency to coordinate with other specified agencies to the extent possible, CFTC staff explained that CFTC made the rule under authority within its jurisdiction and therefore was not required to coordinate. In another example, the Federal Reserve's final Policy Statement on the Scenario Design Framework for Stress Testing also was a guidance document, according to Federal Reserve staff. Unlike a rulemaking, coordination requirements were not triggered for the issuance of guidance.

Regulators Adopted Volcker Rule Regulations Together and Have Continued Coordination on Implementation

Section 619 of the Dodd-Frank Act required banking regulators, CFTC, and SEC to coordinate adoption of rules implementing the act's prohibition on banking entities proprietary trading and investing in or sponsoring hedge funds and private equity funds, subject to certain exceptions.[42] We found evidence that the regulators coordinated efforts on the Volcker rule regulations. Furthermore, although not required, banking regulators and SEC adopted a rulemaking together, while CFTC adopted its own rulemaking that is substantially the same as the other regulators'.[43] Treasury staff told us that, in an interagency working group where regulators discussed plans on how to address the Volcker rule, they encouraged the regulators to adopt a single regulation. The regulators have continued to coordinate voluntarily as rule implementation has proceeded.

Regulators Coordinated to Adopt Volcker Rule Regulations

After coordinating in the rulemaking process on developing a conceptual framework, the banking regulators and SEC acted together to adopt a Volcker rule regulation and CFTC adopted a rulemaking that is substantially the same. Regulators' staff told us that in drafting the Volcker rule regulations their coordination had two critical components. First, FSOC released publicly a study that set forth recommendations to

[42]Pub. L. No. 111–203, § 619, 124 Stat. 1376, 1620-22 (2010).

[43]FDIC, the Federal Reserve, OCC, and SEC issued a joint rule. CFTC issued its rule separately; however, according to the CFTC rule, the text and supplementary information are the same as other agencies' joint rule, except for information specific to CFTC.

the agencies for the effective implementation of the Volcker rule.[44] Treasury's staff told us the study provided a structure for agencies to write the regulation and specific criteria and recommendations to consider in relation to proprietary trading activities. For example, the study outlined categories of metrics banking entities could be required to analyze and report to regulators to help identify impermissible proprietary trading. The study also outlines rigorous tests to identify permitted activities, and grounds to prohibit activities that would involve or result in a material conflict of interest, material exposure to a high-risk asset or high-risk trading strategies, or pose a threat to the safety and soundness of a banking entity or U.S. financial stability. The study also recommended certain criteria to guide regulators' legal interpretations in the rulemaking. It also recommended a compliance and supervisory framework.

Second, to meet the Dodd-Frank Act's coordination requirement on drafting the regulation, the regulators formed an interagency working group.[45] The group, coordinated by Treasury, brought together regulators' experts in various fields to address a diversity of issues. For example, one banking regulator told us that supervision, examination, and legal staff participated in the working group, as did subject area experts in asset management and capital markets. According to staff of one market regulator, different regulators took the lead on drafting the regulation depending on their area of expertise. For example, CFTC took the lead on drafting the language on a hedging exemption.[46] Staff from several regulators commented that views of the group's participants varied in part

[44]FSOC was required to study and make recommendations on implementing the provisions of section 619. Financial Stability Oversight Council, *Study and Recommendations on Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds* (Washington, D.C.: January 2011).

[45]Also see GAO-13-101.

[46]Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5536 (Jan. 31, 2014) (FDIC, Federal Reserve, OCC, and SEC); 79 Fed. Reg. 5,808 (Jan. 31, 2014) (CFTC). See the Volcker rule regulations that implement the exemption for risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings. 12 U.S.C. § 1851(d)(1)(C); 12 C.F.R. § 44.5 (OCC), 12 C.F.R. § 248.5 (Federal Reserve), 12 U.S.C. § 351.5 (FDIC), 17 C.F.R. § 75.5 (CFTC), and 17 C.F.R. § 255.5 (SEC). With hedging, an investor offsets their exposure to certain risks, such as risks of price changes in markets.

because they represented regulators with different missions, but ultimately this diversity benefited the design of the Volcker rule regulations. For example, as one banking regulator said, banking regulators were concerned with the safety and soundness of institutions, while market regulators were concerned with protecting investors and market efficiency. Regulators' staff told us that in drafting the rulemaking's language they discussed various viewpoints that, as one regulator described, led to a more balanced final product. Treasury and regulators' staff also told us that the working group convened regularly throughout the rulemaking process. Treasury staff told us that the Treasury Secretary, as chair of FSOC, facilitated the group's discussions and encouraged regulators to adopt identical Volcker rule regulations. Subsequently, SEC and the banking regulators adopted a joint Volcker rule regulation and CFTC adopted a separate regulation with text and supplementary information that, except for information specific to CFTC or the other regulators, are substantially the same.

Regulators Voluntarily Formed a Volcker Rule Implementation Working Group

To better ensure consistent application of the final rule across all the regulated entities, the banking and market regulators voluntarily formed an implementation working group following the issuance of the Volcker rule regulations. The group includes staff from the initial working group, including regulators' supervisory and legal staff. According to regulators, the working group has met weekly and will continue to meet regularly. The group will address issues associated with implementing the rule and agencies then will provide guidance to the market.

In September 2014, regulators' staff told us that the group has worked to achieve consensus on issues brought before it and has made recommendations to appropriate regulators' officials on how to implement the Volcker rule regulations. Regulators' staff said that issues may be brought before the group by any staff participating in a given group meeting and added that no particular agency leads the group. The group also does not have any delegated authority to make decisions about the rule; each regulator retains such authority. As staff from one regulator told us, a regulator may formulate a suggested approach, which might be brought before the group to discuss since it could be relevant to other regulators. In this way, the regulators have been aiming to demonstrate consensus on matters of interest to market participants, according to regulators' staff.

Regulators’ staff provided examples of the effects of the group’s work.

- For instance, shortly after the Volcker rule regulations were adopted in December 2013, market participants raised concerns about the regulation’s treatment of certain collateralized debt obligations. The group discussed the issue and how regulators jointly could address it. The regulators then jointly issued an interim final rule as a companion to the Volcker rule regulations that addressed treatment of certain collateralized debt obligations.[47]

- In another example, group discussion led the regulators to take actions to help market participants understand how to meet the Volcker rule regulations’ reporting requirements. According to staff of one regulator, market participants were concerned about how to report on the metrics required by the regulations (participants were to begin reporting metrics by September 2014).[48] The regulator’s staff said the group met to discuss the matter and the five regulators met extensively with firms to help them understand the metrics and provide industry with instructions on how to report metrics data. Staff from another regulator added that certain firms submitted their first set of metrics data to regulators in September 2014.

[47]Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities with Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds. 79 Fed. Reg. 5223 (Jan. 31, 2014). The Administrative Procedure Act (APA) generally requires agencies to provide the public adequate notice of a proposed rule followed by a meaningful opportunity to comment. 5 U.S.C. § 553(b)-(c). Federal agencies are authorized to issue regulations without following the APA’s requirements for notice and comment if the agency finds that use of the procedures is “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b). Here, the agencies used the good cause exception to issue an interim final rule, finding that there was an urgent need to act in light of uncertainty expressed by some community banking organizations about whether the final Volcker rule regulation would require them to dispose of their holdings of certain CDOs, which they contended could have an immediate effect on their financial statements and bank regulatory capital.

[48]Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5,536 (Jan. 31, 2014) (FDIC, Federal Reserve, OCC, and SEC); 79 Fed. Reg. 5,808 (Jan. 31, 2014) (CFTC). Under the final rule, a banking entity that meets relevant thresholds specified in the rule must furnish data for the following metrics: risk and position limits and usage; risk factor sensitivities; value-at-risk and stress value-at-risk; comprehensive profit and loss attribution; inventory turnover; inventory aging; and customer facing trade ratio.

Market participants and one industry association with whom we spoke said that it is important for regulators to continue to coordinate implementation of the Volcker rule; for example, because different interpretations in the examination and enforcement process could lead to uncertainty and confusion. One participant was concerned that a lack of coordination could increase costs to businesses. Although regulators told us they have met with various market participants, several market participants and one industry association with whom we spoke said they did not perceive the group's objectives and activities as transparent. In short, market participants and one industry association said they were concerned that regulators were not sufficiently coordinating Volcker rule implementation.

In response to these concerns, staff from one regulator told us they did not reach out to market participants and industry associations, which are familiar with the regulators' communication channels. Another regulator's staff said that the usual process for market participants to ask questions is to contact them. A third regulator's staff said that as soon as the agencies issued the Volcker rule regulations, the regulator told market participants to contact them, not the implementation working group. These regulators told us that market participants and regulators have multiple channels for communicating with each other. Market participants such as banks can inform regulators through regular channels (such as by e-mail or telephone) of any issues they might have about the Volcker rule regulations. Regulators' staff told us that the outcomes of the working group's discussions often are communicated through a frequently asked questions page at each regulator's website. Staff from one regulator also told us that they communicate their decisions with firms through meetings that are part of the regular supervisory process and through industry associations.

CFTC and SEC Harmonized Some Swaps Rules, but Differences across Others Have Raised Compliance Concerns

To reduce risk, increase transparency, and promote market integrity in the financial system, Title VII of the Dodd-Frank Act provides that CFTC will regulate swaps, and SEC will regulate security-based swaps. The act directs these two regulators to provide for the registration and regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants; imposes clearing and trade execution requirements; and creates recordkeeping and real-time reporting regimes.[49] Title VII provides that CFTC and SEC will jointly issue regulations for mixed swaps. CFTC and SEC coordinated on swaps rules, although the timing of rules has differed and differences across some final and proposed rules and guidance have raised compliance and other concerns.

CFTC and SEC Coordinated on Swaps Rules, Although Timing of Rules Has Differed

CFTC and SEC coordinated on their swaps and security-based swaps rulemakings when required. Pursuant to the Dodd-Frank Act, the regulators issued a joint rulemaking defining swap and security-based swap dealers and major swap and major security-based swap participants in May 2012, and another defining the products that would be regulated under Title VII in August 2012.[50] Staff of these two regulators stated that at their own discretion and as required by the Dodd-Frank Act, their respective staffs consulted in developing these rules. SEC staff said

[49]Swaps and other over-the-counter derivatives played a role in the most recent financial crisis, in varying degrees and ways. See GAO-14-67. Swaps traditionally have been privately negotiated between two counterparties in the over-the-counter market, not traded on exchanges. The Financial Stability Oversight Council (FSOC) reported that credit default swaps exacerbated the crisis because they were not well understood by regulators or market participants. See FSOC, Annual Report, 2011. FSOC also noted that OTC derivatives generally were a factor in the propagation of risks during the recent crisis because of their complexity and opacity, which contributed to excessive risk taking, a lack of clarity about the ultimate distribution of risks, and a loss in market confidence.

[50]Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596 (May 23, 2012); Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208 (Aug. 13, 2012). The definitions of “swaps dealer” and “security-based swap dealer” in general encompass persons that engage in types of activity such as holding oneself out as a dealer in swaps or security-based swaps or making a market in swaps or security-based swaps, among others. Dodd-Frank also provides exceptions and an exemption. Pub. L. No. 111-203, § 721(a)(21), § 761(a)(6); 124 Stat. 1376, 1670, 1758 (2010). The statutory definitions of “major swap participant” and “major security-based swap participant” encompass any person that is not a swap dealer or security-based swap dealer and that satisfy any one of three alternative statutory tests. See 7 U.S.C. § 1a(33)(A); 15 U.S.C. 78c(a)(67); see also 77 Fed. Reg. at 30,661.

that in developing the joint rulemakings, they discussed with CFTC staff potential approaches prior to developing drafts, as well as the resulting drafts. They also said staff from both regulators shared the relevant materials describing the proposed regulations with other regulators, and obtained their comments.

CFTC and SEC have not coordinated timetables for proposing and finalizing their swaps rulemakings. As of November 2014, CFTC had adopted rules covering many areas of its regulatory framework for swaps, including registration, regulation, documentation, and business conduct requirements for swap dealers and major swap participants; clearing and trade reporting requirements; swap execution facilities; and interpretive guidance explaining how Dodd-Frank Act swaps requirements would apply to cross-border activities.[51] In contrast, SEC had proposed rules to establish a regulatory framework for security-based swaps, security-based swaps dealers, and major security-based swap participants, but finalized rules covering a fewer number of areas: clearing agency requirements and a rule providing guidance on the cross-border application of its security-based swap dealer and major security-based swap participant definitions.[52] SEC staff said that the pace of their implementation for Title VII of the Dodd-Frank Act has been slower than CFTC's for several reasons. For example, CFTC and SEC took different procedural approaches to addressing the application of Title VII to cross-border activities. SEC proposed specific rules to address cross-border

[51]Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013). CFTC's July 2013 interpretative guidance contains the regulator's interpretation of a U.S. person and explains the application of that interpretation in the cross-border context. CFTC opted to release its cross-border framework through an interpretive guidance and policy statement. Unlike a formal administrative rulemaking, which ultimately yields binding rules, the CFTC guidance is a statement of general policy on cross-border swap activities and allows for flexibility in application to various situations. Three financial industry groups filed a lawsuit on December 4, 2013, alleging, among other things, that CFTC's cross-border guidance and several related staff advisories violate APA and CEA and should be vacated. In September 2014, a federal judge upheld the CFTC's extraterritorial application of the swap regulations but ordered the agency to conduct a more thorough analysis of the costs and benefits of certain rules. *Securities Industry and Financial Markets Association v. United States Commodity Futures Trading Commission*, 2104 WL 4629567 (D.D.C. Sept. 16, 2014).

[52]Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities; republication, 79 Fed. Reg. 47,278 (Aug. 12, 2014).

activities involving security-based swaps, in addition to interpretive guidance, and just recently adopted its first set of these. This approach took more time than CFTC's approach of issuing guidance. In addition, the Dodd-Frank Act gave SEC additional rulemaking responsibilities outside of Title VII, while CFTC's responsibilities are concentrated in this title. Consequently, SEC is not as far along as CFTC on its security-based swap regulations, according to SEC staff.

Differences across Some Rules and Guidance Have Raised Compliance Concerns

While CFTC and SEC worked to harmonize some final swaps and security-based swaps rules and related guidance, substantive differences exist between others. Both agencies have addressed the cross-border application of provisions in the Dodd-Frank Act addressing swap or security-based swap dealers, and major swap or security-based swap participants.[53] Among other things, CFTC guidance and SEC rules address the scope of the term "U.S. persons."[54] Although their definitions of U.S. persons and related requirements are similar in several areas, there are several differences (see table 3). For example, SEC's definition of U.S. person is intended, in part, to identify persons for whom it is reasonable to infer that a significant portion of their financial and legal relationships are likely to exist within the United States. CFTC's definition of U.S. person is intended to identify persons who satisfy the jurisdictional connection under section 2(i) of CEA that the activities have a "direct and significant connection with activities in or that have an effect on

[53]The Dodd-Frank Act amendments to CEA make the swaps provisions of the Dodd-Frank Act applicable to cross-border activities that have a "direct and significant connection with activities in, or effect on, commerce of the United States" or that "contravene such [CFTC] rules or regulations as are necessary or appropriate to prevent evasion" of the swaps provisions of the Dodd-Frank Act. Pub. L. No. 111-203, § 722(d), 124 Stat. 1376, 1673 (2010) (codified at 7 U.S.C. § 2(i)). The Dodd-Frank Act amendments to the Securities Exchange Act of 1934 provide that the swaps provisions of the Exchange Act added by the Dodd-Frank Act do not apply "to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of U.S. rules and regulations as the [SEC] may prescribe as necessary or appropriate to prevent the evasion of any provision added by" the Dodd-Frank Act. § 772(b), 124 Stat. at 1802 (codified at 15 U.S.C. § 78dd(c)). In its guidance, CFTC does not directly define cross-border activity, but discusses it in the context of "interconnectedness of the global swap business."

[54]Persons that meet the definition of "swap dealer" or "security based swap dealer" are subject to requirements related to, among other things, margin, capital and business conduct. The Dodd-Frank Act requires that the CFTC and SEC exempt from designation as a dealer a person that "engages in a *de minimis* quantity of swap dealing in connection with transactions with or on behalf of its customers." 7 U.S.C. 1a(49)(C); 15 U.S.C. 78c (a)(71)(D).

commerce in the United States."[55] To illustrate, CFTC and SEC similarly consider a legal entity such as a partnership, corporation, and trust, organized or incorporated under U.S. laws or that has its principal place of business in the United States as a U.S. person. In contrast, CFTC considers U.S. persons to include collective investment vehicles that are majority owned by U.S. persons, but SEC includes only collective investment vehicles established in the United States.[56]

Table 3: Comparison of Certain Aspects of CFTC's and SEC's Definitions of U.S. Persons Requirements, as of September 30, 2014

CFTC's Definition Includes:	SEC's Definition Includes:
Legal entities such as partnerships, corporations, and trusts, organized or incorporated under the laws of a state or other jurisdiction of the U.S. or having their principal place of business in the United States.	Legal entities such as partnerships, corporations, and trusts organized, incorporated, or established under the laws of the United States or having their principal place of business in the United States.
A foreign branch of a U.S. person is generally treated as a U.S. person.	A foreign branch is treated as part of a U.S. person. A foreign branch means any branch of a U.S. bank if the branch is located outside the United States; the branch operates for valid business reasons; and the branch is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where located.
Collective investment vehicles organized or incorporated in the United States or having its principal place of business in the United States, or majority owned by U.S. persons (except if the fund is publicly offered only to non-U.S. persons).	Investment vehicles established under the laws of the United States or having their principal place of business in the United States.
Employee pension plan of a legal entity organized or incorporated in the United States or having its principal place of business in the United States (unless the pension plan is primarily for foreign employees of such entity), and any trust governed by U.S. laws.	Trusts (treated similarly to corporations and partnerships); "special entities" as defined under Title VII, which include employee benefit plans.

Source: GAO analysis of CFTC guidance and SEC final rule. | GAO-15-81

CFTC guidance and SEC rules also address when a cross-border swap or security-based swap transaction must be counted in order to determine whether a person has to register as a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant. A swap or security-based swap dealer must register with CFTC or SEC,

[55] 7 U.S.C. § 2(i).

[56] A collective investment vehicle is an arrangement pursuant to which funds of one or more investors are pooled together and invested on behalf of such investors by a manager.

respectively, if, among other things, the market participant's swap or security-based swap transactions exceed a minimum threshold. An entity that maintains a substantial position in swaps or security-based swaps must register as a major swap participant or major security-based swap participant with CFTC or SEC, respectively. CFTC and SEC's registration requirements are similar in the following respects:

- U.S. persons must count all swap transactions for purposes of these determinations; and
- Non-U.S. persons who are "conduit affiliates" of U.S persons and "guaranteed affiliates" of U.S. persons generally must also count all their swap dealing activity for purposes of the threshold.[57]

However, the agencies' requirements differ in several respects. For example, SEC defines a conduit affiliate of a U.S. person as a non-U.S. affiliate that enters into swaps with a non-U.S. person and enters into offsetting transactions with its U.S. affiliates to transfer the risks and benefits of those security-based swaps. CFTC does not provide a definition of conduit affiliate, but includes factors that CFTC considers relevant in determining whether a non-U.S. person is a conduit affiliate. These factors include whether the non-U.S. person's financial results are included in the consolidated financial statements of the U.S. person.

Additionally, both CFTC's guidance and SEC's rules address the treatment of non-U.S. persons that are affiliates of U.S. persons and that are guaranteed by a U.S. person, but this treatment differs between the two agencies. CFTC notes that non-U.S. persons who receive any express guarantee from a U.S. affiliate should generally count all of their dealing activity against the thresholds for swap dealers and major swap participants, regardless of whether the counterparty has recourse against the U.S. person in connection with the swap. SEC's rule takes a different approach. SEC requires a non-U.S. guaranteed affiliate to count only those security-based swap transactions for which the counterparty to the swap has legally enforceable recourse against the U.S. guarantor with respect to the underlying security-based swap.

[57]However, under CFTC requirements, non-U.S. persons that are not guaranteed affiliates or conduit affiliates are generally required to count only those swaps they enter into with U.S. person counterparties and certain guaranteed affiliates of U.S. persons toward the threshold for swap dealer registration.

Two market participants with whom we spoke said that the differences in how CFTC and SEC defined a U.S. person and applied the definition might present market participants with compliance and operational challenges. For example, since the definitions differ in relation to types of transactions and products traded, firms will have to spend more resources to comply with both rules than they would spend if the two rules had been harmonized. In addition, consulting firms connected to market participants have publicly identified differences in CFTC and SEC respective definitions of U.S. person.

CFTC and SEC noted in their joint rule defining swap and security-based swap that while Dodd-Frank Act Title VII states that they should treat functionally or economically similar products or entities in a similar manner, it does not require identical rules. SEC stated that in certain rulemakings it might be appropriate to apply Title VII to security-based swaps differently from how CFTC applies Title VII to swaps, as the relevant products, entities, and markets themselves are different, or because the relevant statutory provisions are different.

CFTC and SEC said that they consulted and coordinated with each other as required by the Dodd-Frank Act and adopted similar approaches where possible, consistent with their respective statutory mandates. SEC's staff told us that in some respects, they took a different approach from the approach taken by CFTC in its final guidance.[58] For example, as previously discussed, SEC did not use majority ownership of investment funds for determining U.S. person status. In defining U.S. persons, SEC stated that it did not believe risks created through ownership interests in collective investment vehicles were the types of risks that the security-based swaps provisions of Title VII were intended to address in relation to security-based swaps. In contrast, CFTC said that it believed beneficial

[58]Title VII sets forth the extraterritorial scope of Dodd-Frank Act swaps provisions relating to CFTC-regulated swaps and SEC-regulated security-based swaps. Section 722 of the Dodd-Frank Act provides that provisions relating to swaps do not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene the rules and regulations issued by CFTC as necessary or appropriate to prevent evasion of the Dodd-Frank Act. Section 772 of the Dodd-Frank Act provides that provisions relating to security-based swaps do not apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts a business in security-based swaps in contravention of the rules and regulations that may be issued by SEC to prevent evasion of the Dodd-Frank Act.

owners would be directly exposed to the risks created by the swaps into which their collective investment vehicles entered. SEC acknowledged that different regulations may create inefficiencies for market participants due to conflicting or overlapping requirements, particularly for those participants dealing in both swaps and security-based swaps. However, they also indicated that any increased compliance costs associated with these differences—whereby a person that is a U.S. person for purposes of their final rules would generally not be a U.S. person for purposes of the CFTC cross-border guidance—could be mitigated under certain circumstances.

CFTC and SEC Coordinated on Swaps Rulemakings with Foreign Regulators as Required by the Dodd-Frank Act; Coordination Did Not Always Result in Rule Harmonization

U.S. regulators have coordinated their swaps rulemaking efforts with foreign regulators, but differences remain. The Dodd-Frank Act directs CFTC and SEC to adopt swaps rulemakings and, as appropriate, coordinate with foreign regulators on the establishment of consistent international standards with respect to the regulation of swaps and swap entities.[59] As U.S. regulators conducted their swaps rulemaking for the Dodd-Frank Act, they coordinated with foreign regulators, often through international forums. For example, CFTC and SEC participated in Group of Twenty (G-20) activities, and regulator groups focused on over-the-

[59]According to section 752(a) of the act, to promote effective and consistent global regulation of swaps and security-based swaps, CFTC, SEC, and the prudential regulators, as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

counter derivatives.[60] Foreign regulators with whom we spoke said that they communicated their views on CFTC's or SEC's proposed rulemakings through the comment process or bilateral conversations with the agencies.

Although U.S. and foreign regulators have coordinated their swaps rulemaking efforts, rulemakings in key areas such as trade execution and clearing have not always resulted in full harmonization—particularly between the United States and the European Union (EU). The Dodd-Frank Act did not require the SEC or CFTC to harmonize their rules with foreign regulators. In September 2013, G-20 leaders stated that jurisdictions and regulators should be able to defer to each other when justified by the quality of their respective regulatory and enforcement regimes, when certain conditions are met.[61] In this regard, differences between the U.S. and EU statutory frameworks, rulemakings, and timing have affected efforts to implement a substituted compliance regime in cases where market participants are subject to the rules of their home

[60]Established in 1999, the G-20 is a forum for international cooperation on important issues of the global economic and financial agenda. Its members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, United Kingdom, United States, and the European Union. Another group focused on over-the-counter derivatives is the Over-the-Counter Derivatives Regulators Group, which has reported to the G-20 on the progress of swaps reform. This group includes regulatory authorities with responsibility for regulation of over-the-counter derivatives markets in Australia, Brazil, the European Union, Hong Kong, Japan, Canada (provinces of Ontario and Québec), Singapore, Switzerland, and the United States (both CFTC and SEC). For CFTC, SEC, and Ontario, membership in the Over-the-Counter Derivatives Regulators Group applies to the chairs of the respective agencies and not the full bodies. Other groups have also worked on over-the-counter derivatives. In 2010, the Financial Stability Board formed the Over-the-Counter Derivatives Working Group. In September 2009, international regulators announced the establishment of the Over-the-Counter Derivatives Regulators' Forum, after international regulators had been meeting periodically since January 2009 to exchange views and share information on developments related to central counterparties for over-the-counter credit derivatives.

[61]See G-20, *G-20 Leaders' Declaration*, (St Petersburg, Russia: Sept. 5-6, 2013).

country and the United States.[62] For example, under CFTC staff guidance, trading platforms located outside of the United States that provide U.S. persons or persons located in the United States with trade execution services must register as a swap execution facility or designated contract market and abide by related CFTC rules.[63] In general, swaps involving at least one counterparty that is a U.S. person and that is subject to the trade execution mandate must be executed on either a designated contract market or registered or exempt swap execution facility, cleared through a registered or exempt derivatives clearing organization, and report to a registered or exempt swap data repository.[64] CFTC requirements mandating trading through swap execution facilities or designated contract markets for certain swaps became effective in February 2014. According to a November 2014 report by the Financial Stability Board, most jurisdictions have not yet implemented swaps trading through trading platforms.[65]

[62]CFTC told us that CFTC and SEC have stated that they will allow market participants to comply with comparable laws and regulations of a foreign jurisdiction, consistent with comity principles and Title VII of the Dodd-Frank Act. Title VII of the Dodd-Frank Act provides CFTC and SEC the authority to allow participants to comply with a foreign regulator's comparable regulations. In its guidance, CFTC states that, under its substituted compliance regime, CFTC may determine that certain laws and regulations of a foreign jurisdiction are comparable to and as comprehensive as a corresponding category of U.S. laws and regulations. If CFTC makes such a determination, then an entity or transaction in that foreign jurisdiction that is subject to the category of U.S. laws and regulations deemed comparable will be in compliance therewith if that entity or transaction complies with the corresponding foreign laws and regulations. Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013) (CFTC); Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities; Republication, 79 Fed. Reg. 47,278 (Aug. 12, 2014) (SEC). SEC rules also permit similar determinations; however, SEC stated in its rule that because most of SEC's proposed rules implementing Title VII for security-based swaps have not been finalized, they have not begun making substitute compliance determinations for foreign jurisdictions subject to SEC's cross-border rules.

[63]A designated contract market is a board of trade or exchange designated by the CFTC to trade futures, swaps, or options under the CEA.

[64]SEC has not yet finalized rules for security-based swap trade execution, clearing, and reporting.

[65]Financial Stability Board, *OTC Derivatives Market Reforms: Eighth Progress Report on Implementation*, November 7, 2014. The Financial Stability Board was created by G-20 leaders and is responsible for coordinating and promoting the implementation of G-20 reform commitments.

Regulators from one EU member country and two industry associations told us that to avoid having to comply with the full range of CFTC rules for trading platforms, some foreign trading platforms are opting to not register with the CFTC. As a result, they said that the swap market has begun fragmenting into predominately U.S.-only and non-U.S. venues. The foreign regulators said that geographically segmented markets are likely to be less liquid, because any particular market participant faces a narrower range of counterparties with which to trade. This may make such markets less resilient to shocks and may result in increased hedging costs for U.S financial firms and end users. However, according to the Financial Stability Board's November 2014 report, with few jurisdictions having put trade execution requirements in place, it is not clear whether the risk of liquidity fragmentation will dissipate as regulations become effective and deference mechanisms are established across more jurisdictions, or whether there will be a longer term issue. CFTC staff have made platform registration relief available to qualified EU-regulated trading facilities. As of November 18, 2014, CFTC staff said no platform had availed itself of that relief.[66] In September 2014, the CFTC Chairman said that CFTC will work through issues as other jurisdictions implement their swap trading mandates.

Another example where the United States and the EU continue to work to resolve the impact of differences between their respective swaps rulemakings on the market is with respect to requirements for central counterparties. As previously discussed, swaps involving U.S. persons must be cleared through a CFTC-registered central counterparty. Regulators from one EU member country said the EU has a similar requirement for trades involving EU clearing members or executed on EU trading platforms.[67] Foreign central counterparties that are dually

[66]Conditional No-Action Relief with respect to Swaps Trading on Certain Multilateral Trading Facilities Overseen by Competent Authorities Designated by European Union Member States, CFTC No Action Letter 14-46 (Apr. 9, 2014) and CFTC No Action Letter 14-16 (Feb. 12, 2012) (superseded by No Action Letter 14-46).

[67]The alternative is for swaps clearing for trades involving EU clearing members to clear through non-EU central counterparties that have been "recognized" by the European Securities and Markets Authority (ESMA) to offer clearing services to EU clearing members and trading venues. In this case, the central counterparty does not have to comply with EU rules and be subject to dual oversight. ESMA may only recognize central counterparties from jurisdictions where the European Commission has determined that the legal and supervisory arrangements are equivalent to those in the European Market Infrastructure Regulation.

registered with CFTC and a home country regulator must comply with both sets of rules and be subject to dual oversight. Regulators from one EU member country said this translates into dual requirements on firms operating multinationally or transacting with firms from another jurisdiction, resulting in an increased compliance burden that imposes higher costs on the firms themselves and on regulators. These regulators said that CFTC staff have generally been helpful and flexible in finding mutually acceptable solutions to conflicts between its requirements and CFTC's, although there have been situations where that was not possible. CFTC convened a panel discussion with market participants and foreign regulators in May 2014 to discuss a staff draft proposal that would allow it to provide exemptive relief to foreign central counterparties under regulatory frameworks deemed comparable. Additionally, CFTC staff told us that they have issued time-limited no-action relief to eight foreign central counterparties, including two in the EU, permitting them to clear proprietary positions for U.S. persons pending registration or exemption from registration.

While foreign central counterparties that want to clear swaps involving U.S. persons currently are either permitted to do so pursuant to time-limited relief, or are subject to dual registration and oversight, as of November 18, 2014, the European Commission had not yet recognized the CFTC regulatory framework for U.S.-based central counterparties that would clear swaps involving EU clearing members as equivalent. Such recognition would allow non-EU central counterparties to clear swaps involving EU clearing members without being subject to regulation by EU authorities. The EU had not yet made this determination, in part because CFTC and the EU have different margin requirements for central counterparties: CFTC staff said that CFTC requires central counterparties to hold a minimum of 1 day of margin cover for all futures and options on futures and swaps on agricultural commodities, energy commodities, and metals, whereas the EU requires central counterparties to hold 2 days of margin cover for financial instruments other than swaps.

Regulators from one EU country and industry associations said that the fact that the United States and EU have not yet been able to reach an agreement under which the EU recognizes U.S. central counterparties as equivalent could continue to fragment the market and contract liquidity. As regulators from one EU member country told us, and one CFTC commissioner noted in a September 2014 speech, that if U.S. central counterparties are not recognized as equivalent, EU rules would subject banks that trade with them to higher capital requirements. As a result, they said EU banks would find it cost-prohibitive to clear through U.S.

central counterparties, which would be unable to maintain direct clearing member relationships with EU firms and be ineligible to clear contracts subject to the EU clearing mandate when it becomes effective next year. In addition, the European Commission noted in December 2012 that central counterparties may have incentives to compromise their margins in order to be more competitive in the market. If central counterparties favor the lower margin requirements between countries, they might take on more risk of financial losses when a clearing member defaults. In a September 2014 open meeting, the CFTC Chairman said that CFTC has been working with European regulators on effective recognition within the context of dual registration.

Impacts of the Dodd-Frank Act on SIFIs and Swaps

Financial regulators have continued to implement reforms pursuant to the Dodd-Frank Act, but the full impact of the act remains uncertain. This uncertainty stems from a number of factors, in particular, not all rules have been finalized and taken effect. When the act's reforms are fully implemented, it will take time for the financial services industry to comply with the array of new regulations—meaning additional time will need to elapse to measure the impact of the rules. Moreover, the evolving nature of implementation makes isolating the Dodd-Frank Act's effect on the U.S. financial marketplace difficult. This task is confounded by the many factors that can affect the financial marketplace, including factors that could have an even greater impact than the act.

Recognizing these limitations and difficulties, we developed a multipronged approach to analyze current data and trends that might indicate some of the Dodd-Frank Act's initial impacts. First, using data through the second quarter of 2014, we updated the indicators developed in our December 2012 report to monitor changes in certain characteristics of SIFIs, which are subject to enhanced prudential standards and oversight under the act.[68] Second, we updated our difference-in-difference econometric analysis to infer the act's impact on the provision of credit by bank SIFIs and the safety and soundness of bank SIFIs. Third, using data through the second quarter of 2014, we updated indicators developed in our December 2013 report to monitor the extent to which certain of the act's swap reforms are consistent with the act's

[68] See GAO-13-101.

goals of reducing risk.[69] Fourth, we describe how we expect to develop indicators of non-bank SIFIs that parallel our bank SIFI indicators, as data become available. All the indicators have limitations, which we discuss below.

Indicators Suggest the Dodd-Frank Act Is Associated with Increased Resilience of Bank SIFIs

According to its legislative history, the Dodd-Frank Act contains provisions intended to reduce the risk of failure of a large, complex financial institution and the damage that such a failure could do to the economy.[70] Such provisions include (1) authorizing FSOC to designate a nonbank financial company for Federal Reserve supervision if FSOC determines it could pose a threat to U.S. financial stability and (2) directing the Federal Reserve to impose enhanced prudential standards and oversight on bank holding companies with $50 billion or more in total consolidated assets (bank SIFIs) and nonbank financial companies designated by FSOC (nonbank SIFIs). (See app. IV for a summary of SIFI-related provisions and their rulemaking status.)

As we first reported in December 2012, the Dodd-Frank Act and its implementing rules may result in adjustments to the size, interconnectedness, complexity, leverage, or liquidity of bank SIFIs over time.[71] We updated the indicators we developed in our December 2012 report and updated in our December 2013 report to monitor changes in some of these characteristics of SIFIs.[72] The size and complexity indicators reflect the potential for the financial distress of a single SIFI to affect the financial system and economy (spillover effects). The leverage and liquidity indicators reflect a SIFI's resilience to shocks or its vulnerability to financial distress. Our analysis has limitations. For example, the indicators do not identify causal links between changes in

[69]See GAO-14-67.

[70]S. Rep. No. 111-176, at 4 (2010).

[71]See GAO-13-101.

[72]Our analysis of bank SIFIs includes all top-tier U.S. bank holding companies with total consolidated assets of $50 billion or more that filed Form FR Y-9C, including any U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more and that filed Form FR Y-9C. Generally, a foreign banking organization is a company organized under the laws of a foreign country that engages in the business of banking and that operates a U.S. branch, agency, or commercial lending company subsidiary in the United States or controls a bank in the United States, and any company of which the foreign bank is a subsidiary.

SIFI characteristics and the act. Rather, the indicators track changes in the size, complexity, leverage, and liquidity of SIFIs since the passage of the act to examine if the changes have been consistent with the goals of the act. However, other factors—including international banking standards agreed upon by the Basel Committee on Banking Supervision (Basel Committee) and monetary policy actions—also affect bank holding companies and, thus, the indicators.[73] These factors may have a greater effect than the Dodd-Frank Act on SIFIs. Furthermore, because a number of rules implementing provisions related to SIFIs have not yet been finalized, our indicators include the effects of these rules only insofar as SIFIs have changed their behavior in response to issued rules or in anticipation of expected rules. In this regard, our indicators provide baselines against which to compare future trends. See appendix V for additional limitations of our indicators.

Table 4 summarizes the changes in our bank SIFI indicators from the third quarter of 2010 through the second quarter of 2014 and allows for the following observations (see app. V for more information):

- The number of bank SIFIs declined by three, including one large bank SIFI. We define a large bank SIFI as having $500 billion or more in assets.[74] Median assets and median market share (measured in assets) for large bank SIFIs increased. Even with one less large bank SIFI, the increase in the size of large bank SIFIs is consistent with an increase in the spillover effect posed by such SIFIs. In contrast, median assets and median market share declined for other bank SIFIs (i.e., bank SIFIs with less than $500 billion in assets); these trends are consistent with a decrease in the spillover effects from other bank SIFIs.

[73]The Basel Committee has agreed on a new set of risk-based capital, leverage, liquidity, and other requirements for banking institutions (Basel III requirements). Additionally, the Financial Stability Board and the Basel Committee have agreed on new capital and other requirements applicable to designated globally systemically important banks (G-SIB). U.S. banking regulators have implemented some of these requirements.

[74]There were seven large bank SIFIs as of the second quarter of 2012 (see GAO-14-67). One received regulatory approval to deregister as a bank holding company in February 2013. This company was not included in our analysis after the third quarter of 2012 because it did not file Form FR Y-9C after that quarter. As of the third quarter of 2013, there were six large bank SIFIs.

- Our complexity indicator suggests that large bank SIFIs continued to be relatively more complex than other bank SIFIs, but their total number of legal entities generally decreased over the period. In addition, while the percentage of foreign legal entities increased for all six large bank SIFIs, the number of foreign legal entities decreased for three large bank SIFIs but increased for the other three, and the number of countries in which their foreign legal entities are located decreased for four large bank SIFIs but increased for the other two. Because of the mixed trends, the change in the spillover effects is unclear.

- Our indicators suggest that, on average, bank SIFIs' leverage generally decreased. Similarly, our liquidity indicators suggest that bank SIFIs' liquidity generally improved. Overall, the changes in our leverage and liquidity indicators are consistent with an improvement in SIFIs' resilience.

Table 4: Summary of Trends in Indicators for Bank SIFIs, from Third Quarter 2010 through Second Quarter 2014

Characteristic	Indicator (italicized) and description of trend	Consistent with decreased, no change, or increased spillover effects or resilience?
Size – Size captures the amount of financial services or financial intermediation that a bank holding company provides.	The *number* of large bank SIFIs declined by one, and the number of other bank SIFIs declined by two. Median *assets* for large bank SIFIs increased and median assets for other bank SIFIs decreased. The median *market share* (measured in assets) for large bank SIFIs increased and median *market share* for the other bank SIFIs decreased.	Consistent with an increase in spillover effects of large bank SIFIs. Consistent with a decrease in spillover effects of other bank SIFIs.
Interconnectedness – Interconnectedness captures direct or indirect linkages between financial institutions that may transmit distress from one institution to another.	None	N/A
Complexity – Operational complexity may reflect an institution's diverse lines of business and locations in which the institution operates.	The median *number of legal entities* for large bank SIFIs decreased and the median *number of legal entities* for other bank SIFIs decreased. The n*umber of legal entities located outside of the United States* increased for three large bank SIFIs and decreased for the other three large bank SIFIs. The *percentage of legal entities located outside the United States* increased for all large bank SIFIs. The *number of countries where their foreign entities are located* decreased for four large bank SIFIs and increased for the other two large bank SIFIs.	Unclear

Characteristic	Indicator (italicized) and description of trend	Consistent with decreased, no change, or increased spillover effects or resilience?
Leverage – Leverage can be defined broadly as the ratio between some measure of risk exposure and capital that can be used to absorb unexpected losses from the exposure. Traditionally, it has referred to the use of debt, instead of equity, to fund an asset and been measured by the ratio of total assets to equity on the balance sheet.	The median *tangible common equity as a percentage of total assets* for large and other bank SIFIs increased. The median *total bank holding company equity* as a percentage of total assets for large and other bank SIFIs increased.	Consistent with an increase in resilience
Liquidity – Liquidity represents the ability of an institution to fund its assets and meet its obligations as they become due.	The median *short-term liabilities as a percentage of total liabilities* for large and other bank SIFIs decreased. The median *liquid assets as a percentage of short-term liabilities* for large and other bank SIFIs increased.	Consistent with an increase in resilience

Source: GAO analysis of data from the Federal Reserve Bank of Chicago, the Bureau of Economic Analysis, and the Federal Reserve. | GAO-15-81

Note: Trends for our complexity indicators describe changes from Jun 30, 2010, through June 30, 2014. We define large bank SIFIs as those with $500 billion or more in assets and other bank SIFIs as those with at least $50 billion but less than $500 billion in assets. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. To calculate the median measures, we calculated the relevant indicator measure for each bank holding company, and then reported the median for large bank SIFIs, the median for other bank SIFIs, the median for non-SIFI banks, or the median for the entire group. See appendix V for additional information on our SIFI indicators.

Enhanced Prudential Standards Associated with Some Improvements in Bank SIFIs' Safety and Soundness but Not with Changes in Cost of Credit

Our analysis shows that the Dodd-Frank Act has not been associated with a change in the cost of credit provided by bank SIFIs, but has been associated with an increase in some indicators of their safety and soundness.[75] The act requires the Federal Reserve to impose a variety of regulatory reforms on SIFIs, including enhanced risk-based capital, leverage, and liquidity requirements. These reforms may affect the safety and soundness of bank SIFIs and the cost and availability of credit provided by bank SIFIs. Although capital and leverage requirements may help reduce the probability of bank failures and promote financial stability, they could cause banks to raise lending rates and limit their ability to provide credit, especially during a crisis. Similarly, while stricter liquidity requirements may help reduce the probability of bank failures and promote financial stability, banks could respond to these requirements by increasing lending spreads to offset lower yields on assets or longer maturities on liabilities. To the extent that they increase the cost and

[75]See appendix VI for more information on our econometric analysis.

reduce the availability of credit, these reforms may lead to reduced output and economic growth.[76]

Our econometric analysis assesses the initial impact of new Dodd-Frank Act requirements for bank SIFIs on (1) the cost of credit they provide and (2) their safety and soundness. Our analysis leverages the Dodd-Frank Act requirement that bank holding companies with total consolidated assets of $50 billion or more are subject to enhanced regulation by the Federal Reserve but other bank holding companies are not. Specifically, we compare funding costs, capital adequacy, asset quality, earnings, and liquidity for bank SIFIs and non-SIFI bank holding companies before and after enactment of the Dodd-Frank Act. All else being equal, the difference in the comparative differences is the inferred effect of the Dodd-Frank Act's prudential requirements on bank SIFIs.

Our approach allows us to partially differentiate changes in funding costs, capital adequacy, asset quality, earnings, and liquidity associated with the Dodd-Frank Act from changes due to other factors. However, several factors make isolating and measuring the impact of the act's new requirements for SIFIs challenging. For example, the effects of the act cannot be differentiated from the effects of simultaneous changes in economic conditions, such as the pace of the recovery from the recent recession; regulations, such as those stemming from Basel III; or other changes, such as changes in credit ratings that differentially may affect bank SIFIs and other bank holding companies. In addition, some of the new requirements for SIFIs have yet to be implemented.[77] Additionally, the Federal Reserve intends to propose a capital surcharge on the largest SIFIs. Nevertheless, our estimates are suggestive of the initial effects of the act on bank SIFIs and provide a baseline against which to compare future trends.

Our analysis suggests that the Dodd-Frank Act has not been associated with a significant change in funding costs for bank SIFIs (see table 5). To the extent that the cost of credit provided by bank SIFIs is a function of

[76]For example, see Basel Committee on Banking Supervision, *An Assessment of the Long Term Economic Impact of Stronger Capital and Liquidity Requirements* (Basel, Switzerland: August 2010), and Basel Committee on Banking Supervision and Financial Stability Board, *Assessing the Macroeconomic Impact of the Transition to Stronger Capital and Liquidity Requirements* (Basel, Switzerland: August 2010).

[77]See appendix IV for the rulemaking status of the enhanced prudential standards.

their funding costs, the new requirements for SIFIs appear to have had little effect on the aggregate cost of credit to date.

Table 5: Estimated Changes in Bank SIFI Funding Costs and Measures of Safety and Soundness Associated with the Dodd-Frank Act , from Third Quarter 2010 through Second Quarter 2014 (Percentage Points)

Variable	Measured as	Estimated change and standard error of estimated change (percentage points)
Cost of credit indicator		
Funding cost	Interest expense as a percentage of interest-bearing liabilities	0.02 (0.01)
Safety and soundness indicators		
Capital adequacy	Tangible common equity as a percentage of total assets	1.62*** (0.21)
	Total bank holding company equity as a percentage of total assets	0.57* (0.30)
Asset quality	Performing assets as a percentage of total assets	0.38*** (0.12)
Earnings	Earnings as a percentage of total assets	0.08*** (0.03)
Liquidity	Liquid assets as a percentage of short-term liabilities	-1.53 (10.17)
	Long-term liabilities as a percentage of total liabilities	5.18*** (1.02)

Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Notes: We analyzed data for top-tier U.S. bank holding companies that filed Form FR Y-9C from the first quarter of 2006 through the second quarter of 2014. A top-tier bank holding company is a bank holding company that may own or control other bank holding companies but is not itself owned or controlled by another bank holding company. We defined bank SIFIs as bank holding companies with assets of $50 billion or more. Our analyses includes U.S. bank holding companies with total consolidated assets of $50 billion or more and the U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We estimated the effects of the new SIFI requirements on bank SIFIs by regressing the variables listed in the table on indicators for each bank holding company, indicators for each quarter, indicators for whether a bank holding company is a SIFI for quarters from the third in 2010 through the second in 2014, and other variables controlling for size, foreign exposure, securitization income, other nontraditional income, and participation in the Troubled Asset Relief Program. Estimated changes are the coefficients on the indicators for whether a bank holding company is a SIFI in quarters from the third in 2010 through the second in 2014. *=estimate is statistically significant at the 10 percent level. **=estimate is statistically significant at the 5 percent level. ***=estimate is statistically significant at the 1 percent level. Clustered standard errors are in parentheses. For more information on our methodology, see appendix VI.

Our estimates also suggest that the act is associated with improvements in some measures of bank SIFIs' safety and soundness. As shown in table 6, bank SIFIs appeared to have held more capital than they otherwise would have since the Dodd-Frank Act's enactment. The quality of assets on the balance sheets of bank SIFIs also seems to have improved since enactment. Finally, the act is associated with higher earnings and with improved liquidity as measured by the extent to which a bank holding company has been using long-term sources of funding. However, liquidity as measured by the capacity of a bank holding company's liquid assets to cover its short-term liabilities has not clearly improved since enactment. Thus, the Dodd-Frank Act appears to be associated with improvements in some indicators of safety and soundness for bank SIFIs (relative to non-SIFI bank holding companies) but not others. See appendix VI for more details on our regression analysis.

Swaps Indicators Provide Baselines for Assessing the Future Impact of Some Swap Reforms

As we reported last year, once fully implemented, some provisions in Title VII of the Dodd-Frank Act may help reduce systemic risks to financial markets by increasing margins posted for uncleared swaps. Using data through the second quarter of 2014, we updated the set of indicators that we developed in our December 2013 report to measure changes in the use of margin collateral for over-the-counter derivatives.[78] This set of indicators provides a baseline for measuring future changes in the use of margin collateral, as the Dodd-Frank Act swap reforms have not been fully implemented, but has several key limitations, as described later in this section.[79]

Our margin indicators measure the fair value of collateral pledged by counterparties to secure over-the-counter derivatives contracts as a percentage of net current credit exposure to those counterparties for

[78]See GAO-14-67. In the December 2013 report, we also developed a set of indicators to measure changes in the central clearing of swaps using data from the CFTC Swaps Report. However, the CFTC Swaps Reports posted since then do not always separate data on swaps that are required to clear from data on swaps that are not required to clear. As a result, we are not able to construct the clearing indicators using this data source.

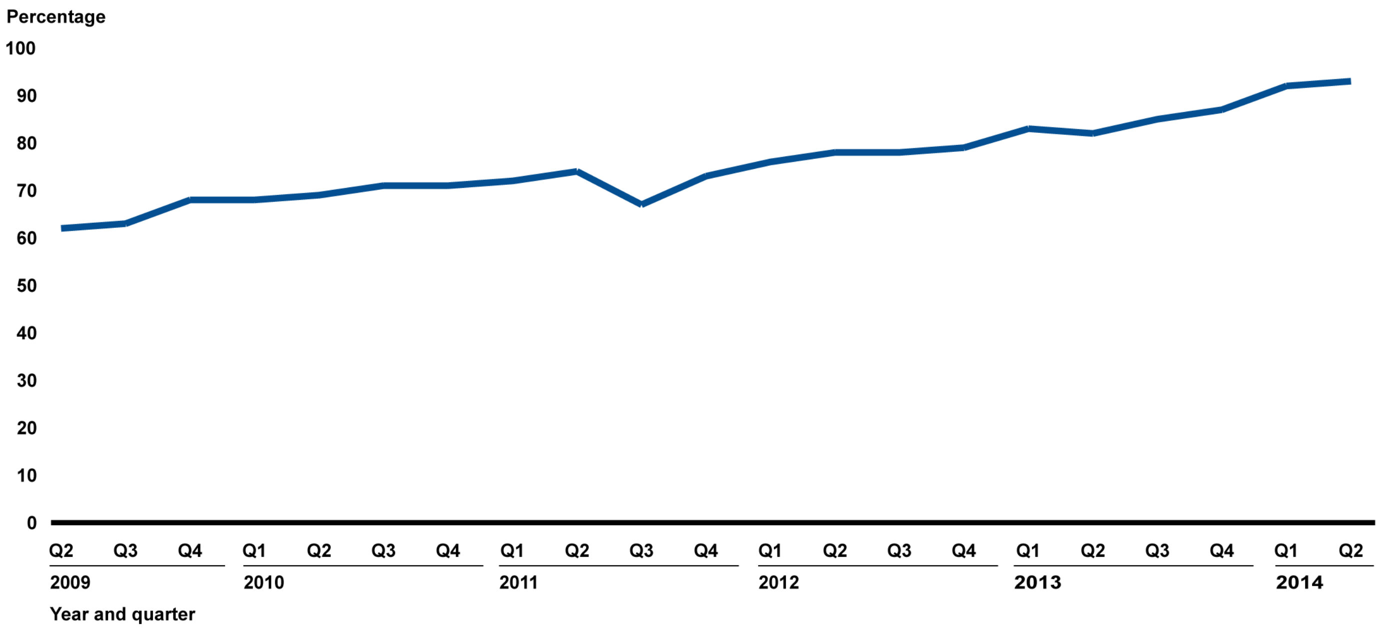
[79]See appendix VII for tables listing select Dodd-Frank Act swap reform rulemakings.

bank, financial, and savings and loan holding companies.[80] To protect itself from the loss it would incur if a counterparty defaulted on a derivative contract, a swap entity could require counterparties to post margin collateral in an amount equal to or greater than its exposure to the contracts. An increase in collateral as a percentage of credit exposure suggests that holding companies have required their counterparties to post a greater amount of collateral against their credit exposure due to derivatives contracts overall, which would be consistent with the purposes of the act's swap reforms.

Figures 1 and 2 show trends in our margin indicators from the second quarter of 2009 through the second quarter of 2014. Figure 1 shows that holding companies in our sample have increased the rate of collateralization of their net current credit exposure to all counterparties from 71 percent in the third quarter of 2010 to 93 percent in the second quarter of 2014, suggesting that these holding companies required their counterparties to post a greater amount of collateral against their derivatives contracts. However, as discussed later, aggregate measures of collateralization rates can mask differences in collateralization rates for different counterparty types.

[80]Our indicators use data collected by the Federal Reserve on Form FR Y-9C, which currently requires bank, financial, and savings and loan holding companies with $10 billion or more in assets to report their net current credit exposure to counterparties in over-the-counter derivatives contracts and the fair value of the collateral pledged by those counterparties to secure the contracts. The fair value of collateral is the amount that would be received if the collateral were sold in an orderly transaction between market participants in its principal market on the measurement date. The net current credit exposure approximates the credit loss that a bank, financial, or savings and loan holding company would suffer if its counterparties defaulted on their over-the-counter derivatives contracts. Net current credit exposure to a counterparty is derived by first calculating the fair values of all derivatives contracts with that counterparty, where the fair value of a derivative contract is analogous to the fair value of collateral. If a legally enforceable bilateral netting agreement is in place, the fair values of all applicable derivatives contracts in the scope of the netting agreement with that counterparty are netted to a single amount, which may be positive, negative, or zero. Net current credit exposure across all counterparties is the sum of the gross positive fair values for counterparties without legal netting arrangements and the net current credit exposure for counterparties with legal netting agreements.

Figure 1: Fair Value of Collateral as a Percentage of Net Current Credit Exposure from Over-the-Counter Derivatives Contracts for All Counterparty Types Combined, from Second Quarter 2009 through Second Quarter 2014

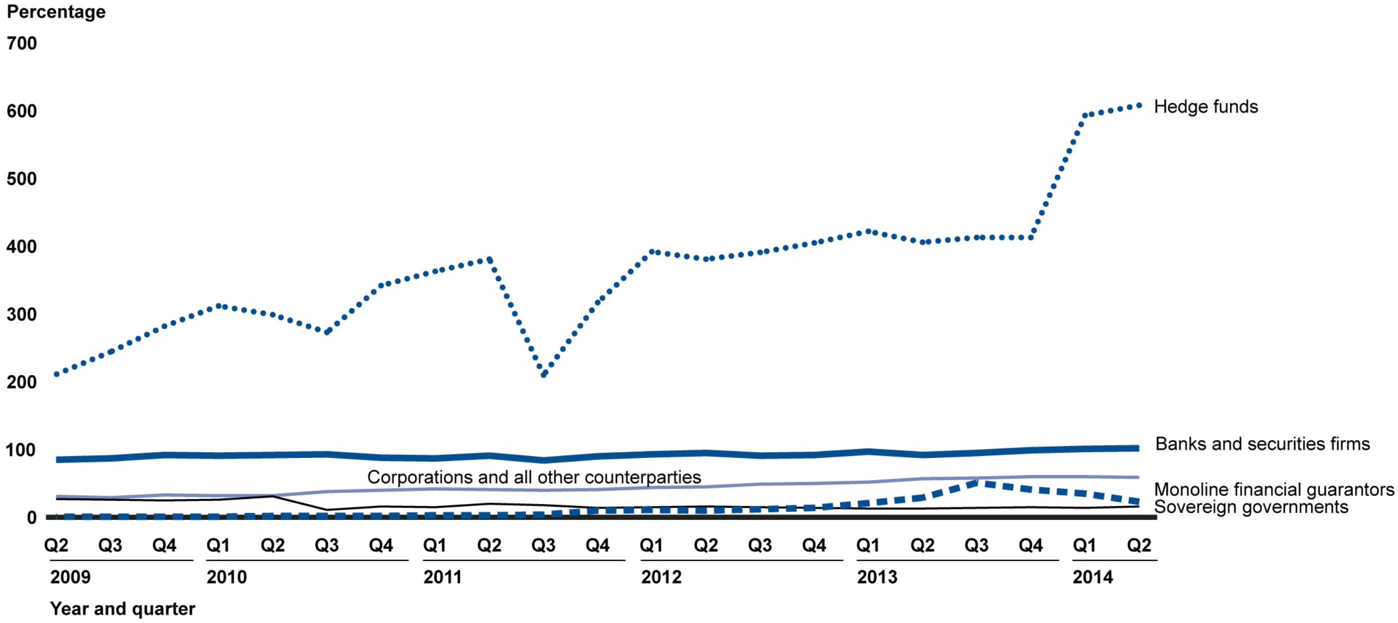


Source: GAO analysis of Federal Reserve Bank of Chicago data. | GAO-15-81

Note: To calculate the fair value of collateral as a percentage of net current credit exposure for all counterparty types, we used quarterly data (from second quarter 2009 through second quarter 2014) on U.S. bank, financial, and savings and loan holding companies from Form FR Y-9C. For each quarter, we divided total fair value of collateral pledged by all counterparty types for all of these holding companies by total net current credit exposure to all counterparty types for all of these holding companies.

Figure 2 shows that the collateral posted by type of counterparty—banks and securities firms, monoline financial guarantors, hedge funds, sovereign governments, and corporate and all other counterparties—increased (as a percentage of net credit exposure) between the third quarter of 2010 and the second quarter of 2014. However, the rate of collateralization consistently differed by the type of counterparty, with hedge funds consistently posting more collateral as a percentage of credit exposure than other types of counterparties. As we reported in December 2013, according to OCC, the rates differ partly because swap dealers may require certain counterparties to post both initial and variation margin and other counterparties to post only variation margin. Depending on how the margin rules are finalized, the rates of collateralization for some counterparties may increase.

Figure 2: Fair Value of Collateral as a Percentage of Net Current Credit Exposure from Over-the-Counter Derivatives Contracts by Counterparty Type, from Second Quarter 2009 through Second Quarter 2014



Source: GAO analysis of Federal Reserve Bank of Chicago data. | GAO-15-81

Note: To calculate the fair value of collateral as a percentage of net current credit exposure for each counterparty type, we used quarterly data (from second quarter 2009 through second quarter 2014) on U.S. bank, financial, and savings and loan holding companies from Form FR Y-9C. For each quarter and for each counterparty type, we divided total fair value of collateral pledged by that counterparty type for all of these holding companies by total net current credit exposure to that counterparty type for all of these holding companies.

Our margin indicators are subject to important limitations. First, they do not identify causal links between changes in collateralization and the Dodd-Frank Act, including its regulations. Rather, the set of indicators tracks changes in collateralization since the act's passage to examine if the changes were consistent with the act's goals for increasing collateralization. Second, both net current credit exposure and the fair value of collateral are as of a point in time because the fair values of derivatives contracts and collateral can fluctuate over time. Third, an average collateralization of 100 percent does not ensure that all current counterparty exposures have been eliminated, because one counterparty's credit exposure may be overcollateralized and another's undercollateralized. Fourth, our indicators measure the fair value of the collateral held against net current credit exposures but do not necessarily measure the risk of uncollateralized losses. The fair value of net current credit exposure does not fully account for the riskiness of any single swap contract. If a party has entered into riskier swaps, it is possible for the rate of collateralization to increase while the risk of uncollateralized losses also increases. Fifth, there are more than 1,000 holding companies in our sample, but less than 100 holding companies report positive credit exposure to counterparties in over-the-counter derivatives contracts and five holding companies accounted for more than 95 percent of the total gross notional amount of all derivatives contracts reported by all of the holding companies in our sample. Thus, trends in these indicators largely reflect collateralization rates for a small number of holding companies. Finally, these indicators do not reflect collateralization rates for companies, such as stand-alone broker-dealers, that have credit exposure to counterparties in over-the-counter derivatives contracts but are not affiliated with a bank, financial, or savings and loan holding company.

FSOC's Nonbank SIFI Determinations and Risks It Considered in Making Them

As we continue to develop our SIFI indicators, we also expect to include indicators for nonbank financial companies designated by FSOC (nonbank SIFIs). These are institutions whose material financial distress or activities FSOC determines, based on statutory factors in section 113 of the Dodd-Frank Act and FSOC's rule and interpretive guidance on nonbank financial company determinations, could pose a threat to U.S. financial stability that shall be subject to Federal Reserve supervision and enhanced prudential standards. In January and December 2012, the Federal Reserve proposed its enhanced prudential standards rules for certain U.S. and foreign companies operating in the United States, respectively, and finalized rules implementing some of these standards in March 2014.[81] As of November 2014, FSOC has designated three nonbank financial companies—American International Group, Inc. (AIG) and General Electric Capital Corporation (GECC) in July 2013 and Prudential Financial, Inc. (Prudential). FSOC has determined that each of these institutions was predominately engaged in financial activities (that is, at least 85 percent of their revenues were derived from, or more than 85 percent of their assets were related to, activities that were financial in

[81]The rule did not impose standards on nonbanks. Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594 (Jan. 5, 2012); Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies, 77 Fed. Reg. 76,628 (Dec. 28, 2012); and Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17,240 (Mar. 27, 2014). See appendix IV for a summary of select finalized SIFI-related rulemakings.

nature). At the time of the determinations, according to FSOC, AIG was the third-largest insurance company in the United States and one of the largest insurers in the world. GECC was one of the largest holding companies in the United States and a significant source of credit to commercial and consumer customers. Finally, Prudential was one of the largest financial services companies in the United States providing a wide array of financial services, including group and individual life insurance, annuities, retirement-related products and services, and asset management.

We expect our future indicators to take into account risks FSOC considered in making the determinations, because in their view such risks could impair the financial stability of the financial services industry and significantly damage the broader economy. We expect to develop indicators—as we did for bank SIFIs—of the likelihood of failure and the impact of failure on the financial system and the broader economy. For example, indicators of the size and complexity of nonbank SIFIs would reflect the potential for the financial distress of a single nonbank SIFI to affect the financial system and the economy, and indicators of the leverage and liquidity of bank SIFIs, which reflect a SIFI's resilience to shocks or its vulnerability to financial distress. We plan to report on these indicators in the next year's report.

Agency Comments

We are not making any recommendations in this report. We provided a draft of this report to CFPB, CFTC, FDIC, the Federal Reserve Board, FSOC, NCUA, OCC, SEC, and Treasury for review and comment. Each agency provided technical comments, which we have incorporated, as appropriate.

CFTC and NCUA provided written comments that we have reprinted in appendixes VIII and IX, respectively. In its comments, CFTC state it is working closely with SEC and other regulators to coordinate and align their rules as much as possible and is working with international regulators to harmonize rules across borders where possible, consistent with its statutory responsibilities. CFTC noted that while its goal remains harmonization, there will inevitably be some regulatory variation in different jurisdictions, given differences in statutory mandates, regulatory frameworks, market concerns, regulatory philosophies, and political processes. In its comments, NCUA noted its limited responsibilities under the Dodd-Frank Act and stated it would review strategies to enhance rulemaking analytics.

We are sending copies of this report to the appropriate congressional committees and members, CFPB, CFTC, FDIC, the Federal Reserve, FSOC, NCUA, OMB, OCC, SEC, Treasury, and other interested parties. This report will also be available at no charge on our website at http://www.gao.gov.

Should you or your staff have questions concerning this report, please contact me at (202) 512-8678 or clowersa@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix X.

A. Nicole Clowers
Director, Financial Markets and Community Investment

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Majority Leader
The Honorable Mitch McConnell
Minority Leader
United States Senate

The Honorable John Boehner
Speaker
The Honorable Nancy Pelosi
Minority Leader
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The Honorable Debbie Stabenow
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The Honorable Thad Cochran
Ranking Member
Committee on Agriculture, Nutrition and Forestry
United States Senate

The Honorable Barbara A. Mikulski
Chairwoman
The Honorable Richard Shelby
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Tim Johnson
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The Honorable Michael Crapo
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Committee on Banking, Housing, and Urban Affairs
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Appendix I: Objectives, Scope, and Methodology

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), various federal agencies are directed or have the authority to issue hundreds of regulations to implement the act's provisions.[1] This report examines

- the regulatory analyses conducted by federal financial regulators(financial regulators) in their Dodd-Frank Act rulemakings, including their assessments of which rules they considered to be major rules;
- coordination between and among federal and foreign regulators on Dodd-Frank Act rulemakings, in particular the Volcker rule and swaps rules; and
- possible impact of selected Dodd-Frank Act provisions and their implementing regulations on the financial marketplace.[2]

The financial regulators are the Bureau of Consumer Financial Protection, also known as the Consumer Financial Protection Bureau (CFPB), the Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), Commodity Futures Trading Commission (CFTC), and the Securities and Exchange Commission (SEC).

To examine the regulatory analyses conducted by the regulators, we focused our analysis on final rules issued pursuant to the Dodd-Frank Act that became effective from July 23, 2013, through July 22, 2014, a total of 54 rules (see app. II). We compiled these rules from a website maintained

[1] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[2] Section 619 of Dodd-Frank, "Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds" (also known as the Volcker rule), generally prohibits banking entities from engaging in proprietary trading—trading in stocks or other financial instruments using the institution's own funds for the purpose of selling in the near term or to profit from short-term price changes. Title VII of Dodd-Frank establishes a new regulatory framework for swaps to reduce risk, increase transparency, and promote market integrity in swaps markets—a swap is a type of derivative that involves an ongoing exchange of one or more assets, liabilities, or payments for a specified period. Financial and nonfinancial firms use swaps and other over-the-counter derivatives to hedge risk, or speculate, or for other purposes. In early 2014, Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System (Federal Reserve), Office of the Comptroller of the Currency, and the Securities and Exchange Commission (SEC) released their rulemaking on section 619—and in 2013 and 2014 CFTC, the Federal Reserve, and SEC released rulemakings addressing swaps.

by the Federal Reserve Bank of St. Louis that tracks Dodd-Frank Act regulations (which we corroborated with officials from the agencies under review) and from the agencies.[3] In examining the regulatory analyses of the agencies in our review, we reviewed federal statutes, regulations, GAO studies, and other material to identify the regulatory analyses, including cost-benefit analyses, the agencies had to conduct as part of their Dodd-Frank Act rulemakings. Of the 54 rules in our scope, 38 rules were substantive regulations, meaning that they were generally subject to public notice and comment under the Administrative Procedure Act—and therefore required the agencies to conduct some form of regulatory analysis. For each of the 38 rules, we reviewed *Federal Register* releases of the final rule document and summarized the analyses conducted by the regulators. Using GAO's Federal Rules database, we found that 15 of the 54 rules were classified by the Office of Management and Budget (OMB) as major rules under the Congressional Review Act (CRA). That is, they resulted in or are likely to result in an annual impact on the economy of $100 million or more, a major increase in costs or prices, or 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. For agencies subject to Executive Order (E.O.) 12866, such major rules would be considered significant regulatory actions and subject to formal cost-benefit analysis.[4] We developed a data collection instrument to compare and assess the regulatory analysis conducted for the major rules against the principles outlined in OMB Circular A-4, which provides guidance to federal agencies on the development of regulatory analysis.[5] To conduct our analyses, we reviewed *Federal Register* releases of the proposed and final rules, agencies' guidance and practice, academic publications,

[3]We use rules, regulations, or rulemakings generally to refer to *Federal Register* notices of agency action pursuant to the Dodd-Frank Act, including final and interim final rules. It does not include orders, guidance, notices, interpretations, corrections, or policy statements. With this and our past three reports, we have reviewed all Dodd-Frank Act rules in effect as of July 22, 2014. See GAO-12-151, GAO-13-101, and GAO-14-67.

[4]The Congressional Review Act definition of a major rule is similar, but not identical, to the definition of a "significant regulatory action" under E.O. 12866.

[5]As independent regulatory agencies that are not required to follow the economic analysis requirements of E.O. 12,866, the financial regulatory agencies also are not required to follow OMB Circular A-4. However, Circular A-4 is an example of best practices for agencies to follow when conducting regulatory analyses, and the financial regulatory agencies have told us that they follow the guidance in spirit.

previous GAO reports, and the cost-benefit analyses they included in the proposed and final rulemakings, and interviewed agency staff—from CFPB, CFTC, SEC, FDIC, NCUA, the Federal Reserve, OCC, Department of the Treasury, and the Office of Financial Research—to document their use of OMB Circular A-4 and their own economic policies and guidance; their analytical tools; the data they analyze and the data's limitations; resource, analytical, and legal constraints; their use of discounting; and the roles of economists and others in the rulemaking process. To understand the economic principles and intellectual foundations of cost-benefit analysis, challenges in applying economic principles to financial services rulemaking, analytical tools and techniques in financial services rulemaking, and agency use of cost-benefit analysis, we interviewed a judgmental sample of seven academics based on their academic and professional experience. To ensure that the experts represented a range of views and experiences, we compiled a list of academics who had expertise in cost-benefit analysis—they had written on cost-benefit analysis, may have participated in recent conferences on such analysis in financial regulation, or had relevant practitioner experiences. Their expertise ranged from financial services regulation to health regulation. Some also have produced economic analyses of financial services regulation, but not limited to the Dodd-Frank Act or other specific legislation or law. They also included those with economic and legal backgrounds. We selected a range of academics to minimize potential biases. The views of individuals in this sample are not generalizable to all academics.

To examine interagency coordination among the regulators, we reviewed the Dodd-Frank Act, *Federal Register* releases, and GAO reports to identify the interagency coordination or consultation requirements for the 54 rules in our scope; we did not examine the effects of noncoordination on rulemakings, which was beyond the scope of our review. We also interviewed officials or staff from CFPB, CFTC, SEC, FDIC, NCUA, the Federal Reserve, Treasury, and the Office of Financial Research to identify the nature of interagency coordination and its challenges. We reviewed the *Federal Register* releases of the proposed and final rules and interviewed agency officials to document if the agencies coordinated or consulted with other U.S. or foreign regulators, as required by the Dodd-Frank Act or on a voluntary basis. Specifically, one analyst reviewed the releases and, in each rulemaking, looked for the occurrence of specific key words including consult, joint, international, and foreign. The analyst then made the determination whether the keywords pointed to contextually relevant behavior or activities. For example, if a rulemaking contained the word consult, the analyst would determine if the consultation was relevant because it involved an agency consulting with another financial agency or international regulator in developing the rulemaking. An analyst also looked through the rulemakings, and, as needed, through various statutes to see if coordination was required. As a part of this review, the analyst looked for key words relating to coordination in the *Federal Register* releases and the requirements for coordination in the Dodd-Frank Act, and the Securities and Exchange Act, as amended. The analyst recorded this information in a spreadsheet. A second analyst then reviewed related rulemakings and acts and also independently evaluated each determination documented in the spreadsheet to reach concurrence on the assessment. In cases in which the first and second analyst disagreed, the two analysts reviewed and discussed the assessments and relevant documents to reach concurrence.

To examine steps taken by CFPB to comply with the act's interagency coordination requirements for its supervision activities, we reviewed the act; CFPB's Supervision and Examination Manual; memorandums of understanding with federal and state regulators on interagency coordination, and other agency documents; and GAO reports. We interviewed officials from CFPB and federal prudential regulators about their coordination with each other and coordination challenges. We focused on the Volcker and swaps rules because the former required interagency coordination in drafting, while the latter addresses an issue of interest to domestic and foreign regulators. To obtain views on these rules, we interviewed staff from a sample of market participants (financial services businesses) and industry associations, and foreign regulators that showed the most interest. To select market participants, industry associations, and foreign regulators, we analyzed CFTC and SEC swaps rulemakings by calculating which organizations most frequently commented on these rulemakings effective from July 23, 2013, through July 22, 2014. We interpreted the frequency of commenting as interest in a rulemaking. This is a judgmental sample. Findings based on judgmental samples are not intended to be generalizable.

Finally, we took a multipronged approach to analyze what is known about the impact of the Dodd-Frank Act on the financial marketplace. First, we used bank holding company data from the Federal Reserve Bank of Chicago (from Form FR Y-9C), Bureau of Economic Analysis, the Federal Reserve Board, and Federal Reserve Board's National Information

Center to update our indicators monitoring changes in certain characteristics of systemically important financial institutions (SIFI) that might be affected by Dodd-Frank Act regulations.[6] We focused on SIFIs because some provisions of the act and related rules may result in adjustments to the size, interconnectedness, complexity, leverage, or liquidity of SIFIs over time. We did not update our indicator of leverage as measured by tangible common equity as a percentage of risk-weighted assets because the definition of risk-weighted assets reported on Form FR Y-9C, our data source for this indicator, changed in the first quarter of 2014 for some bank holding companies. Thus, we cannot construct a consistent time series of this indicator. Although changes in the indicators may be suggestive of the impact of the act on SIFIs, the indicators have a number of limitations, including that they do not identify any causal linkages between the act and changes in the indicators. Moreover, factors other than the act affect SIFIs and, thus, the indicators.

Second, we used data from the Federal Reserve Bank of Chicago to update our econometric analysis estimating changes in the (1) cost of credit provided by bank SIFIs and (2) safety and soundness of bank SIFIs. Specifically, we compare funding costs, capital adequacy, asset quality, earnings, and liquidity for bank SIFIs and non-SIFI bank holding companies before and after enactment of the Dodd-Frank Act. All else being equal, the difference in the comparative differences is the inferred effect of the Dodd-Frank Act's prudential requirements on bank SIFIs. We did not update our analysis of capital adequacy—one aspect of safety and soundness—as measured by tangible common equity as a percentage of risk-weighted assets, tier 1 capital as a percentage of total assets, or tier 1 capital as a percentage of risk-weighted assets. In our December 2013 report, we constructed the variables for the above two indicators by using quarterly bank holding company data from Form FR Y-9C to construct our capital adequacy indicators, but the definitions of tier 1 capital and risk-weighted assets reported on Form FR Y-9C

[6]The Dodd-Frank Act does not use systemically important financial institution (SIFI). Academics and other experts commonly use SIFI to refer to bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by the Financial Stability Oversight Council for Federal Reserve supervision and enhanced prudential standards under the Dodd-Frank Act. For purposes of this report, we refer to these bank and nonbank financial companies as bank systemically important financial institutions (bank SIFIs) and nonbank systemically important financial institutions (nonbank SIFIs), respectively. We also refer collectively to nonbank SIFIs and bank SIFIs as SIFIs when appropriate.

changed in the first quarter of 2014 for some bank holding companies. Thus, we cannot construct a consistent time series of these variables. Our analysis does not differentiate the effects of the act from simultaneous changes in economic conditions or other factors that may affect such companies. See appendix VI for more details on our econometric analysis.

Third, to monitor the extent to which certain swap reforms are consistent with the act's goals of reducing risk, we updated our indicators of the amount of margin posted by over-the-counter derivatives counterparties using bank holding company data from the Federal Reserve Bank of Chicago (Form FR Y-9C). We did not update our indicators of swaps clearing because the CFTC Swaps Report—the source of the data we used to construct our clearing indicators—does not always separate data on swaps that are required to clear from data on swaps not required to clear. Although changes in our indicators may be suggestive of the act's impact on the swaps market, the indicators have a number of limitations, including that they do not identify causal linkages between the act and changes in the indicators. As new data become available, we expect to update and, as warranted, revise our indicators and create additional indicators to cover other provisions. For parts of our methodology that involved the analysis of computer-processed data from the Federal Reserve Bank of Chicago, the Federal Reserve Board, the National Information Center, and the Bureau of Economic Analysis, we assessed the reliability of these data by reviewing relevant documentation and corresponding with Federal Reserve staff, and we determined that they were sufficiently reliable for our purposes—monitoring changes in indicators of the size, interconnectedness, complexity, leverage, and liquidity of bank SIFIs; estimating changes in the cost of credit bank SIFIs provided and their safety and soundness; and assessing changes in indicators of the amount of margin collateral used by over-the-counter derivatives counterparties.

We conducted this performance audit from January 2014 to December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Dodd-Frank Act Rules Effective as of July 22, 2014

The following table lists the 54 Dodd-Frank Act rules that we identified as having effective dates during the scope of our review—from July 23, 2013, through July 22, 2014. Thirty-eight of the rules were substantive and, of those, 15 were major.[1]

Table 6: Dodd-Frank Act Rules Effective from July 23, 2013, through July 22, 2014

		Critical dates				Agency stated it conducted analysis under			
Rulemaking	**Responsible regulator[a]**	**Published**	**Effective[b]**	**Federal Register number**	**Sub-stantive rule**	**Regulatory Flexibility Act[c]**	**Paperwork Reduction Act[c]**	**Dodd-Frank Act provision[d]**	**Major rule**
Application of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-Interest	CFPB	7/17/2014	7/17/2014	79 Fed. Reg. 41,631	No	Not applicable	Not required	§§1411-1412	No
Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934	SEC	1/8/2014	7/7/2014	79 Fed. Reg. 1522	Yes	Not required	Yes	§ 939A	No
Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation	FDIC	4/14/2014	7/1/2014	79 Fed. Reg. 20,762	No	Not required	Yes	§ 210	No
Rules of Practice for Issuance of Temporary Cease-and-Desist Orders	CFPB	6/18/2014	7/18/2014	79 Fed. Reg. 34,622	No	Not applicable	Not required	§ 1053	No
Broker-Dealer Reports	SEC	8/21/2013	6/1/2014	78 Fed. Reg. 51,910	Yes	Yes	Yes	§ 982	Yes

[1]As defined by the Congressional Review Act, a major rule is a rule that the Office of Management and Budget 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; 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. Pub. L. No. 104-121, tit. II, § 251, 110 Stat. 868 (1996) (codified at 5 U.S.C. § 804(2)).

Rulemaking	Responsible regulator[a]	Critical dates: Published	Critical dates: Effective[b]	Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under: Regulatory Flexibility Act[c]	Agency stated it conducted analysis under: Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Removal of References to Credit Ratings in Certain Regulations Governing the Federal Home Loan Banks	FHFA	11/8/2013	5/7/2014	78 Fed. Reg. 67,004	Yes	Not required	Not required	§ 939A	No
Application of the Revised Capital Framework to the Capital Plan and Stress Test Rules	Federal Reserve	3/11/2014	4/15/2014	79 Fed. Reg. 13,498	Yes	Not required	Yes	§ 165	No
Technical Amendments: Removal of Rules Transferred to the Consumer Financial Protection Bureau; OCC Address Change[e]	OCC	3/21/2014	3/21/2014	79 Fed. Reg. 15,639	Yes	Not applicable	Not applicable	§§ 1002(12)(J), 1022	No
Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities With Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	CFTC, FDIC, Federal Reserve, OCC, SEC	1/31/2014	4/1/2014	79 Fed. Reg. 5223	Yes	Not required	Not required	§ 171	Yes

Rulemaking	Responsible regulator[a]	Critical dates: Published	Critical dates: Effective[b]	Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under: Regulatory Flexibility Act[c]	Agency stated it conducted analysis under: Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule[f]	FDIC	4/14/2014	4/14/2014	79 Fed. Reg. 20,754	Yes	Yes	Yes	§§ 171, 939A	Yes
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	CFTC	1/31/2014	4/1/2014	79 Fed. Reg. 5808	Yes	Not required	No[g]	§ 619	Yes
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	FDIC, Federal Reserve, OCC, SEC	1/31/2014	4/1/2014	79 Fed. Reg. 5536	Yes	Not required	Yes	§ 619	Yes
Risk-Based Capital Guidelines; Market Risk	Federal Reserve	12/18/2013	4/1/2014	78 Fed. Reg. 76,521	No	Not required	Not required	§ 939A	No
Defining Larger Participants of the Student Loan Servicing Market	CFPB	12/6/2013	3/1/2014	78 Fed. Reg. 73,383	Yes	Not required	Not required	§ 1024	No
Financial Market Utilities	Federal Reserve	12/20/2013	2/18/2014	78 Fed. Reg. 76,973	Yes	Yes	Not required	§ 806	No

Rulemaking	Responsible regulator[a]	Critical dates: Published	Critical dates: Effective[b]	Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under: Regulatory Flexibility Act[c]	Agency stated it conducted analysis under: Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Removal of Certain References to Credit Ratings under the Investment Company Act	SEC	1/8/2014	2/7/2014	79 Fed. Reg. 1316	Yes	Yes	Yes	§ 939A	No
Prohibition Against Federal Assistance to Swaps Entities (Regulation KK)	Federal Reserve	1/3/2014	1/31/2014	79 Fed. Reg. 340	Yes	Not reported[h]	Yes	§ 716	No
Removal of Transferred OTS Regulations Regarding Recordkeeping and Confirmation Requirements for Securities Transactions Effected by State Savings Associations and Other Amendments	FDIC	12/19/2013	1/21/2014	78 Fed. Reg. 76,721	Yes	Not required	Not required	§ 316	No
Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations under the Equal Credit Opportunity Act (Regulation B)	CFPB	1/31/2013	1/18/2014	78 Fed. Reg. 7216	Yes	Not required	Yes	§ 1474	No
Appraisals for Higher-Priced Mortgage Loans	CFPB, FDIC, Federal Reserve, FHFA, NCUA, OCC	2/13/2013	1/18/2013	78 Fed. Reg. 10,368	Yes	Yes[i]	Yes	§ 1471	No
Appraisals for Higher-Priced Mortgage Loans	CFPB, FDIC, Federal Reserve, FHFA, NCUA, OCC	12/26/2013	1/18/2014	78 Fed. Reg. 78,520	Yes	Yes[i]	Yes	§ 1471	No
Registration of Municipal Advisors	SEC	11/12/2013	1/13/2014[j]	78 Fed. Reg. 67,468	Yes	Yes	Yes	§ 975	Yes

Rulemaking	Responsible regulator[a]	Critical dates: Published	Critical dates: Effective[b]	Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under: Regulatory Flexibility Act[c]	Agency stated it conducted analysis under: Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations	CFTC	11/14/2013	1/13/2014	78 Fed. Reg. 68,506	Yes	Not required	Yes	§ 724	Yes
Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages	HUD	12/11/2013	1/10/2014	78 Fed. Reg. 75,215	Yes	Not required	None	§ 1412	No
Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)	CFPB	10/23/2013	1/10/2014	78 Fed. Reg. 62,993	No	Not required[k]	Not required	§§ 1061,1098, 1433,1463	No
Homeownership Counseling Organizations Lists Interpretive Rule	CFPB	11/14/2013	1/10/2014	78 Fed. Reg. 68,343	No	Not applicable	Not required	§ 1450	No
Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)	CFPB	10/1/2013	1/10/2014	78 Fed. Reg. 60,382	Yes	Not required[k]	Not required	§§ 1022,1032, 1061,1085, 1098, 1100A, 1412,1463	No
Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)	CFPB	7/24/2013	1/10/2014	78 Fed. Reg. 44,686	Yes	Not required[k]	Not required	§§ 1022,1061, 1098, 1100A, 1412,1463	No

Rulemaking	Responsible regulator[a]	Critical dates		Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under		Dodd-Frank Act provision[d]	Major rule
		Published	Effective[b]			Regulatory Flexibility Act[c]	Paperwork Reduction Act[c]		
Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)	CFPB	6/12/2013	1/10/2014	78 Fed. Reg. 35,430	Yes	Not required	Yes	§§ 1402, 1100A	No
Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)	CFPB	2/14/2013	1/10/2014	78 Fed. Reg. 10,696	Yes	Yes	Yes	§ 1463	Yes
Mortgage Servicing Rules under the Truth in Lending Act (Regulation Z)	CFPB	2/14/2013	1/10/2014	78 Fed. Reg. 10,902	Yes	Yes	Yes	§§ 1418, 1420, 1464	Yes
High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)	CFPB	1/31/2013	1/10/2014	78 Fed. Reg. 6856	Yes	Not required	Yes	§§ 1431-1433	No
Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)	CFPB	1/30/2013	1/10/2014	78 Fed. Reg. 6408	Yes	Yes	Yes	§§ 1411-1412	Yes
Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy	CFTC	11/6/2013	1/6/2014	78 Fed. Reg. 66,621	Yes	Not required	Yes	§§ 713, 724	No

Rulemaking	Responsible regulator[a]	Critical dates: Published	Critical dates: Effective[b]	Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under: Regulatory Flexibility Act[c]	Agency stated it conducted analysis under: Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Home Mortgage Disclosure (Regulation C): Adjustment to Asset-Size Exemption Threshold	CFPB	12/30/2013	1/01/2014	78 Fed. Reg. 79,285	No	Not applicable	Not applicable	§ 1094	No
Truth in Lending (Regulation Z): Adjustment to Asset-Size Exemption Threshold	CFPB	12/30/2013	1/1/2014	78 Fed. Reg. 79,286	No	Not applicable	Not applicable	§ 1461	No
Truth in Lending (Regulation Z)	CFPB	12/16/2013	1/1/2014	78 Fed. Reg. 76,033	No	Not applicable	Not required	§ 1431	No
Policy Statement on the Scenario Design Framework for Stress Testing	Federal Reserve	11/29/2013	1/1/2014	78 Fed. Reg. 71,435	No	Yes	Not required	§ 165	No
Consumer Leasing (Regulation M)	CFPB/Federal Reserve	11/25/2013	1/1/2014	78 Fed. Reg. 70,193	No	Not applicable	Not required	§ 1100E	No
Truth in Lending (Regulation Z)	CFPB/Federal Reserve	11/25/2013	1/1/2014	78 Fed. Reg. 70,194	No	Not applicable	Not required	§ 1100E	No
Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule	Federal Reserve/OCC	10/11/2013	1/1/2014	78 Fed. Reg. 62,018	Yes	Yes	Yes	§§ 171, 939A	Yes

Rulemaking	Responsible regulator[a]	Critical dates: Published	Critical dates: Effective[b]	Federal Register number	Sub-stantive rule	Agency stated it conducted analysis under: Regulatory Flexibility Act[c]	Agency stated it conducted analysis under: Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Derivatives Clearing Organizations and International Standards	CFTC	12/2/2013	12/31/2013	78 Fed. Reg. 72,476	Yes	Not required	Yes	§§ 752, 805	Yes
Swap Dealers and Major Swap Participants; Clerical or Ministerial Employees	CFTC	10/28/2013	11/27/2013	78 Fed. Reg. 64,173	No	Not required	Not required	§§721, 731	No
Stress Testing of Regulated Entities	FHFA	9/26/2013	10/28/2013	78 Fed. Reg. 59,219	Yes	Not required	Not required	§ 165	No
Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve	Federal Reserve	8/23/2013	10/25/2013	78 Fed. Reg. 52,391	Yes	Yes	Yes	§ 318	Yes
Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations	CFTC	8/15/2013	10/15/2013	78 Fed. Reg. 49,663	Yes	Not required	Not required	§ 807	No
Extension of Temporary Registration of Municipal Advisors	SEC	9/30/2013	9/30/2013	78 Fed. Reg. 59,814	Yes	Not applicable	Yes	§ 975	No
Rules of Practice for Issuance of Temporary Cease-and-Desist Orders	CFPB	9/26/2013	9/26/2013	78 Fed. Reg. 59,163	No	Not applicable	Not required	§ 1053	No
Clearing Exemption for Certain Swaps Entered into by Cooperatives	CFTC	8/22/2013	9/23/2013	78 Fed. Reg. 52,286	Yes	Not required	Yes	§ 721	No

		Critical dates				Agency stated it conducted analysis under			
Rulemaking	Responsible regulator[a]	Published	Effective[b]	Federal Register number	Sub-stantive rule	Regulatory Flexibility Act[c]	Paperwork Reduction Act[c]	Dodd-Frank Act provision[d]	Major rule
Disqualification of Felons and Other ''Bad Actors'' from Rule 506 Offerings	SEC	7/24/2013	9/23/2013	78 Fed. Reg. 44,730	Yes	Yes	Yes	§ 926	Yes
Core Principles and Other Requirements for Swap Execution Facilities	CFTC	6/4/2013	8/5/2013	78 Fed. Reg. 33,476	Yes	Not required	Yes	§ 733	Yes
Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement under the Commodity Exchange Act	CFTC	6/4/2013	8/5/2013	78 Fed. Reg. 33,606	Yes	Not required	Yes	§ 723	No
Procedural Rule to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination	CFPB	7/3/2013	8/2/2013	78 Fed. Reg. 40,352	No	Not required	Not required	§ 1024	No
Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades	CFTC	5/31/2013	7/30/2013	78 Fed. Reg. 32,866	Yes	Not required	Yes	§ 727	No

Source: GAO analysis of Federal Register notices and Congressional Review Act filings. | GAO-15-81

Note: In this report, we use the terms "rules," "regulations," or "rulemakings" generally to refer to Federal Register notices of agency action pursuant to the Dodd-Frank Act, including regulations or rules that are final or interim final. With this and our past three reports, we have reviewed all Dodd-Frank Act rules in effect as of July 22, 2014. In this table we are not including a CFTC rulemaking on swap data repositories (registration standards, duties and core principles), which amended an existing swaps data rule that we included in our previous report, or a CFPB rulemaking on Electronic Fund Transfers (Regulation E), which revised amendments to Regulation E that we included in our previous report.

[a]Board of Governors of the Federal Reserve System (Federal Reserve), Bureau of Consumer Financial Protection (CFPB), Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Securities and Exchange Commission (SEC), and Department of Housing and Urban Development (HUD). The Department of the Treasury (Treasury) is included here due to its rulemaking authority.

[b]To determine our scope for this review, we considered the earliest effective date shown in the final Federal Register releases for each Dodd-Frank Act rulemaking. If the effective date shown fell within our scope, the rule was included even if subsequent rulemakings or agency decision changed the effective date of the rule.

[c]Instances in which the agency certified that the final regulation would not have a significant economic impact on a substantial number of small entities and therefore no further analysis under the Regulatory Flexibility Act was necessary are marked as not required. Instances in which the agency stated that no collection of information would be required by the regulation also are marked as not required. Instances in which an agency determined that the Regulatory Flexibility Act or the Paperwork Reduction Act did not apply are marked as not applicable.

[d]Executive Order 12,866 requires executive agencies, such as Treasury, to the extent permitted by law and where applicable, to (1) assess benefits and costs of available regulatory alternatives and (2) include both quantifiable and qualitative measures of benefits and costs in their analysis. Additionally, CFTC, CFPB, and SEC each have requirements for conducting economic analyses of their rules under their own organic statutes. First, CFTC, under section 15(a) of the Commodity Exchange Act, is required to consider the benefits and costs of its action before promulgating a regulation under the Commodity Exchange Act or issuing certain orders. Second, CFPB, under the Consumer Financial Protection Act (Title X of the Dodd-Frank Act), must consider the potential benefits and costs of its rules for consumers and entities that offer or provide consumer financial products and services. Third, under the Securities Act, the Securities Exchange Act, the Investment Advisers Act, and the Investment Company Act, SEC must consider whether a rule will promote efficiency, competition, and capital formation whenever it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest. Under the Securities Exchange Act, SEC also must not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the act.

[e]OCC issued part of this rulemaking in accordance with the Dodd-Frank Act, which transferred rulemaking authority from OCC to CFPB for the Secure and Fair Enforcement for Mortgage Licensing Act and the financial information privacy provisions it title V of the Gramm-Leach-Bliley Act. The remaining amendments made by this rule were not related to the Dodd-Frank Act.

[f]FDIC’s Basel III final rule is not the result of a rulemaking requirement in the Dodd-Frank Act but it implements (1) FDIC’s Basel III interim final rule (78 FR 55340 (Sept. 10, 2014)) (“Basel III R”) with no substantive changes from the rule text in the Basel III interim final rule and (2) Dodd-Frank Act sections 171 (known as the Collins Amendment) and section 939A. This rule is substantively identical to the joint Basel III capital rules issued by the Federal Reserve and OCC (Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 78 Fed. Reg. 62,018 (Oct. 11, 2013)). The adoption of more stringent, risk-based, and leverage capital requirements by FDIC, the Federal Reserve, and OCC was not mandated by the Dodd-Frank Act.

[g]CFTC stated that, to avoid double accounting of information collections for which control numbers were sought, it used FDIC, OCC, and Federal Reserve information and therefore did not submit and information collection request in connection with its Volker rule rulemaking. See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with Hedge Funds and Private Equity Funds, 78 Fed. Reg. 5808, 6046 (Jan. 31, 2014).

[h]The final rule as published in the Federal Register is silent on the Regulatory Flexibility Act analysis, though the Federal Reserve reported to GAO in its CRA filing that it had performed a Regulatory Flexibility Act analysis. In the interim final rule publication in June 2013, the Federal Reserve Board stated that it believed that the interim final rule would not have a significant economic impact on a substantial number of small entities; nevertheless, the Federal Reserve included an initial regulatory flexibility analysis and requested comment on the rule’s effect on small entities. See 78 Fed. Reg. 34,545, 34,548 (June 10, 2013).

[i]Federal Reserve published a Regulatory Flexibility Act analysis; CFPB, FDIC, FHFA, NCUA, and OCC certified that the rule would not have a significant economic impact on a substantial number of small entities.

[j]This effective date was delayed until July 1, 2014, as per a temporary stay by SEC. See Registration of Municipal Advisors; Temporary Stay of Final Rule, 79 Fed. Reg. 2,777 (Jan. 16, 2014).

[k]The agency stated that the rulemaking, which made clarifying changes to a prior rule, qualified as a “series of closely related rules” for purposes of the RFA, and therefore the agency relied on its RFA analyses conducted in connection with the prior rulemaking.

Appendix III: Coordination for Dodd-Frank Act Rules Effective as of July 22, 2014

The following table lists the 54 Dodd-Frank Act rules that we identified as having effective dates during the scope of our review (from July 23, 2013, through July 22, 2014), whether we found evidence of coordination during the rulemaking process, whether the Dodd-Frank Act required interagency or international coordination, and the nature of coordination (if any).

Table 7: Evidence of Coordination on Dodd-Frank Act Rules Effective from July 23, 2013, through July 22, 2014

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Application of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-Interest	CFPB	7/17/2014	7/17/2014	Yes	No	Consumer Finance Protection Bureau (CFPB) consulted, or offered to consult with, the Department of Housing and Urban Development (HUD), Department of the Treasury (Treasury), Department of Veterans Affairs (VA), Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), Board of Governors of the Federal Reserve System (Federal Reserve), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC).[c]
Removal of Certain References to Credit Ratings under the Securities Exchange Act of 1934	SEC	1/8/2014	7/7/2014	No	No	None
Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation	FDIC	4/14/2014	7/1/2014	No	No	None
Rules of Practice for Issuance of Temporary Cease-and-Desist Orders	CFPB	6/18/2014	7/18/2014	Yes	Yes	CFPB consulted or offered to consult with the prudential regulators, FTC, and HUD.[d]
Broker-Dealer Reports	SEC	8/21/2013	6/1/2014	Yes[e]	No[f]	SEC intends to coordinate with the Commodity Futures Trading Commission (CFTC) to implement the rule.[g]

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Removal of References to Credit Ratings in Certain Regulations Governing the Federal Home Loan Banks	FHFA	11/8/2013	5/7/2014	No	No	None
Application of the Revised Capital Framework to the Capital Plan and Stress Test Rules	Federal Reserve	3/11/2014	4/15/2014	Yes[e]	Yes	Federal Reserve staff spoke with Federal Insurance Office staff.[c]
Technical Amendments: Removal of Rules Transferred to the Consumer Financial Protection Bureau; OCC Address Change	OCC	3/21/2014	3/21/2014	No	No	None
Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities With Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	CFTC, FDIC, Federal Reserve, OCC, SEC	1/31/2014	4/1/2014	Yes	No	Jointly issued.
Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach to Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule	FDIC	4/14/2014	4/14/2014	Yes	No	FDIC coordinated with OCC and the Federal Reserve.
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	CFTC	1/31/2014	4/1/2014	Yes	Yes	CFTC developed the same rule as the Federal Reserve, FDIC, OCC, and SEC. CFTC coordinated with foreign governments.
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	FDIC, Federal Reserve, OCC, SEC	1/31/2014	4/1/2014	Yes	Yes	Jointly issued. Agencies coordinated with foreign governments.

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Risk-Based Capital Guidelines; Market Risk	Federal Reserve	12/18/2013	4/1/2014	No	No	None
Defining Larger Participants of the Student Loan Servicing Market	CFPB	12/6/2013	3/1/2014	Yes	Yes	CFPB consulted or offered to consult with the Department of Education, FDIC, FTC, the Federal Reserve, OCC, and NCUA.[d]
Financial Market Utilities	Federal Reserve	12/20/2013	2/18/2014	No	No	None
Removal of Certain References to Credit Ratings under the Investment Company Act	SEC	1/8/2014	2/7/2014	No	No	None
Prohibition Against Federal Assistance to Swaps Entities (Regulation KK)	Federal Reserve	1/3/2014	1/31/2014	No	No	None
Removal of Transferred OTS Regulations Regarding Recordkeeping and Confirmation Requirements for Securities Transactions Effected by State Savings Associations and Other Amendments	FDIC	12/19/2013	1/24/2014	No	No	None
Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations under the Equal Credit Opportunity Act (Regulation B)	CFPB	1/31/2013	1/18/2014	Yes	Yes	CFPB consulted, or offered to consult with, the prudential regulators, HUD, FHFA, and FTC.[d]
Appraisals for Higher-Priced Mortgage Loans	CFPB, FDIC, Federal Reserve, FHFA, NCUA, OCC	2/13/2013	1/18/2014	Yes	Yes	Jointly issued.
Appraisals for Higher-Priced Mortgage Loans	CFPB, FDIC, Federal Reserve, FHFA,NCUA, OCC	12/26/2013	1/18/2014	Yes	Yes	Jointly issued.
Registration of Municipal Advisors	SEC	11/12/2013	1/13/2014	No	No	None

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Correction.	CFTC	11/14/2013	1/13/2014	Yes	Yes	CFTC coordinated with the Federal Reserve.[h,i]
Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages	HUD	12/11/2013	1/10/2014	Yes	Yes	HUD consulted with CFPB.
Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)	CFPB	10/23/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult with, the prudential regulators, SEC, HUD, FHFA, FTC, and Treasury.
Homeownership Counseling Organizations Lists Interpretive Rule	CFPB	11/14/2013	1/10/2014	Yes	No	CFPB consulted, or offered to consult with, the Federal Reserve, FDIC, FHFA, FTC, NCUA, OCC, SEC, Treasury, USDA, and VA.[c]
Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)	CFPB	10/1/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult with, the prudential regulators, FHFA, FTC, HUD, SEC, and Treasury.[d]
Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)	CFPB	7/24/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult with, the prudential regulators, SEC, HUD, , the Department of Agriculture (USDA), FHFA, FTC, Treasury, and VA.[d]
Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)	CFPB	6/12/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult with, FDIC, Federal Reserve, FHA, FTC, HUD, NCUA, OCC, SEC, Treasury, USDA, and VA.[c,d]
Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)	CFPB	2/14/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult, with the prudential regulators, FHFA, FTC, and the Federal Emergency Management Agency (FEMA), and HUD.[d]

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Mortgage Servicing Rules under the Truth in Lending Act (Regulation Z)	CFPB	2/14/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult, with the prudential regulators, FEMA, FHFA, FTC, and HUD.[d]
High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)	CFPB	1/31/2013	1/10/2014	Yes	Yes	CFPB consulted or offered to consult with the prudential regulators, FTC, HUD, FHFA, and USDA.[d]
Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)	CFPB	1/30/2013	1/10/2014	Yes	Yes	CFPB consulted, or offered to consult with, the prudential regulators, SEC, HUD, FHFA, FTC, and Treasury.[d]
Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy	CFTC	11/6/2013	1/6/2014	Yes	Yes	This rule is based on the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants proposed rules (see 76 Fed. Reg. 23,732 (Apr. 28, 2011)). In developing the proposed rules, CFTC staff worked with the staff of the prudential regulators and also consulted with SEC.[h,i]
Home Mortgage Disclosure (Regulation C): Adjustment to Asset-Size Exemption Threshold	CFPB	12/30/2013	1/01/2014	No	No	None
Truth in Lending (Regulation Z): Adjustment to Asset-Size Exemption Threshold	CFPB	12/30/2013	1/1/2014	No	No	None
Truth in Lending (Regulation Z)	CFPB	12/16/2013	1/1/2014	No	No	None
Policy Statement on the Scenario Design Framework for Stress Testing	Federal Reserve	11/29/2013	1/1/2014	No	No	None
Consumer Leasing (Regulation M)	CFPB/ Federal Reserve	11/25/2013	1/1/2014	Yes	No	Jointly issued.
Truth in Lending (Regulation Z)	CFPB/ Federal Reserve	11/25/2013	1/1/2014	Yes	No	Jointly issued.

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule	Federal Reserve /OCC	10/11/2013	1/1/2014	Yes	Yes	Jointly issued.
Derivatives Clearing Organizations and International Standards	CFTC	12/2/2013	12/31/2013	Yes	Yes	CFTC stated that it coordinates with domestic and international regulators informally as required and through participation in several working groups and international organizations, such as the International Organization of Securities Commissions (IOSCO).[h,i]
Swap Dealers and Major Swap Participants; Clerical or Ministerial Employees	CFTC	10/28/2013	11/27/2013	No	No[c]	None.[c]
Stress Testing of Regulated Entities	FHFA	9/26/2013	10/28/2013	Yes	Yes	FHFA coordinated with the Federal Reserve and the Federal Insurance Office.
Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve	Federal Reserve	8/23/2013	10/25/2013	No	No	None
Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations	CFTC	8/15/2013	10/15/2013	Yes[e]	Yes	CFTC consulted with the Federal Reserve and other agencies.[c] CFTC coordinated with foreign regulators through IOSCO.[h,i]
Extension of Temporary Registration of Municipal Advisors	SEC	9/30/2013	9/30/2013	No	No	None

Rulemaking	Responsible regulator[a]	Critical dates		Evidence of coordination?	Required?	Nature of coordination
		Published	Effective[b]			
Rules of Practice for Issuance of Temporary Cease-and-Desist Orders	CFPB	9/26/2013	9/26/2013	Yes	Yes	CFPB consulted, or offered to consult with, the prudential regulators, Department of Justice, HUD, and FTC.
Clearing Exemption for Certain Swaps Entered into by Cooperatives	CFTC	8/22/2013	9/23/2013	Yes[e]	No[c]	CFTC worked frequently with NCUA, and also worked with the FDIC, Federal Reserve, SEC, and Treasury.[c] The Commission intends to continue to work with the other prudential regulators.[g]
Disqualification of Felons and Other ‘‘Bad Actors’’ from Rule 506 Offerings	SEC	7/24/2013	9/23/2013	No	No	None
Core Principles and Other Requirements for Swap Execution Facilities	CFTC	6/4/2013	8/5/2013	Yes	Yes	CFTC consulted with SEC and international regulators.[h,i]
Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement under the Commodity Exchange Act	CFTC	6/4/2013	8/5/2013	Yes[e]	Yes	CFTC consulted primarily with SEC.[c,h,i]
Procedural Rule to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination	CFPB	7/3/2013	8/2/2013	Yes	Yes	CFPB consulted with the prudential regulators and FTC.[d]
Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades	CFTC	5/31/2013	7/30/2013	Yes	Yes	CFTC staff consulted with the staff of several other federal financial regulators. CFTC consulted directly with foreign regulators.[h,i]

Source: GAO analysis. | GAO-15-81

Note: In this report, we use the terms “rules,” “regulations,” “or rulemakings” generally to refer to Federal Register notices of agency action pursuant to the Dodd-Frank Act, including regulations and rules that are final or interim final.

[a]Board of Governors of the Federal Reserve System (Federal Reserve), Consumer Financial Protection Bureau (CFPB), Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Securities and Exchange Commission (SEC), Department of Housing and Urban Development (HUD), and Department of the Treasury (Treasury).

[b]To determine our scope for this review, we considered the earliest effective date shown in the final Federal Register releases for each Dodd-Frank Act rulemaking. If the effective date shown fell within our scope, the rule was included even if subsequent rulemakings changed the effective date of the rule.

[c]As detailed by agencies in response to our inquiry.

[d]Section 1022(b)(2)(B) of the Dodd-Frank Act requires CFPB, in prescribing a rule under the federal consumer financial laws, to consult with the appropriate prudential regulators or other federal agencies before proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies. Additionally, under section 1015 of the act, CFPB must coordinate with SEC, CFTC, FTC, and other federal agencies and state regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

[e]See Nature of Coordination for additional notes on evidence of coordination.

[f]The Securities Exchange Act of 1934, not the Dodd-Frank Act, requires SEC to coordinate with CFTC with respect to regulation of security futures products.

[g]This is the rulemaking agency's intention to coordinate on implementation of the rule, not evidence of coordination on making the rule.

[h]According to section 712(a)(1), before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to Subtitle A of Title 7 of the Dodd-Frank Act, CFTC shall consult and coordinate to the extent possible with SEC and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

[i]According to section 752(a) of the act, to promote effective and consistent global regulation of swaps and security-based swaps, CFTC, SEC, and the prudential regulators, as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

Appendix IV: Summary of Rulemakings Related to Selected Dodd-Frank Act Provisions Applicable to Systemically Important Financial Institutions

The Dodd-Frank Act contains several provisions—including designation by the Financial Stability Oversight Council (FSOC) for supervision by the Board of Governors of the Federal Reserve System (Federal Reserve) and enhanced prudential standards—that apply to nonbank financial companies if FSOC determines that material financial distress at the company or the nature, scope, size, scale, concentration, interconnectedness, or mix of activities at the company could pose a threat to U.S. financial stability. Enhanced prudential standards also apply to bank holding companies with $50 billion or more in total consolidated assets. For this report, we refer to these bank and nonbank financial companies as bank systemically important financial institutions (bank SIFI) and nonbank systemically important financial institutions (nonbank SIFI), respectively. Table 8 summarizes some of the Dodd-Frank Act provisions and the rulemakings, including their status, to implement those provisions as of July 22, 2014.

Table 8: Rulemakings Implementing Selected Dodd-Frank Act Provisions Applicable to Systemically Important Financial Institutions and Their Status as of July 22, 2014

Dodd-Frank Act provision	Rulemaking status
Financial Stability Oversight Council (FSOC) designation of Nonbank Financial Companies for Federal Reserve supervision—Section 113 authorizes FSOC to determine that a nonbank financial company shall be subject to enhanced prudential standards and supervision by the Federal Reserve if FSOC determines that (i) material financial distress or (ii) the nature, scope, size, scale, concentration, interconnectedness, or mix of activities at the nonbank financial company could pose a threat to the financial stability of the United States. FSOC's final rule and interpretative guidance describe the manner in which FSOC intends to apply statutory considerations (related to a six-category framework for size, interconnectedness, substitutability, leverage, and liquidity risk, and maturity mismatch), and the procedures FSOC intends to follow, when making a determination to designate a nonbank financial company for Federal Reserve supervision under section 113 of the act.	FSOC final rule and interpretative guidance, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies. 77 Fed. Reg. 21,637 (Apr. 11, 2012). On July 8, 2013, FSOC voted to designate two nonbank financial companies for Federal Reserve supervision. On September 19, 2013, FSOC voted to designate a third nonbank financial company for Federal Reserve supervision.

Dodd-Frank Act provision	Rulemaking status
Enhanced supervision and prudential standards—Sections 165 and 166 require the Federal Reserve to impose enhanced prudential standards and early remediation requirements on bank holding companies, including foreign banking organizations with total consolidated assets of $50 billion or more that are treated as bank holding companies for purposes of the Bank Holding Company Act of 1956, and nonbank financial companies designated by FSOC to prevent or mitigate risks to U.S. financial stability.[a] According to the Federal Reserve, the standards for foreign banking organizations and foreign nonbank financial companies supervised by the Federal Reserve are broadly consistent with the standards proposed for large U.S. bank and nonbank SIFIs. The final rule requires foreign banking organizations with U.S. nonbranch assets, as defined in the final rule, of $50 billion or more to form a U.S. intermediate holding company and imposes enhanced risk-based and leverage capital requirements, liquidity requirements, risk-management requirements, and stress-testing requirements on the U.S. intermediate holding company.	Federal Reserve final rule, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17, 240 (Mar. 27, 2014). The March 2014 final rule does not impose enhanced prudential standards on nonbank financial companies designated by FSOC for supervision by the Federal Reserve.
Enhanced risk-based capital and leverage requirements required under section 165(b)(1)(A)(i)—capital plans: Bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by FSOC must comply with the requirements of any regulations adopted by the Federal Reserve on capital plans and stress tests, including the Federal Reserve's capital plan rule, which requires such companies to submit an annual capital plan to the Board for review that, together with the proposed stress tests (below), would demonstrate to the Board that the company has robust, forward-looking capital planning processes that account for their unique risks and permit continued operations during times of stress.[b] Intermediate holding companies of foreign banking organizations generally are subject to the same U.S. risk-based and leverage capital standards that apply to a U.S. bank holding company. An intermediate holding company of a foreign banking organization with total consolidated assets of $50 billion or more is subject to the Federal Reserve's capital plan rule.	Federal Reserve final rule, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17, 240 (Mar. 27, 2014). The March 2014 final rule does not impose enhanced prudential standards on nonbank financial companies designated by FSOC for supervision by the Federal Reserve.
Enhanced risk-based capital and leverage requirements required under section 165(b)(1)(A)(i)—capital surcharges: The Federal Reserve intends to issue a proposal imposing a quantitative risk-based capital surcharge for all or a subgroup of bank holding companies with $50 billion or more in total consolidated assets, certain foreign banking organizations, and nonbank financial companies designated by FSOC based on the Basel capital surcharge for globally systemically important banks (G-SIB).[c] The Federal Reserve stated that it may, through a future rulemaking, impose a capital surcharge to an intermediate holding company of a foreign banking organization that is determined to be a domestic systemically important bank, consistent with the Basel Committee on Banking Supervision's (Basel Committee) regime or a similar framework.	Intention to propose included in Jan. 5, 2012, proposed rule, Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594, and Dec. 28, 2012, proposed rule, Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies, 77 Fed. Reg. 76628.

Dodd-Frank Act provision	Rulemaking status
Enhanced liquidity requirements required under section 165(b)(1)(A)(ii)—liquidity risk management standards: Bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by FSOC would be subject to liquidity risk-management standards that require those companies to, among other things, project cash flow needs over various time horizons, stress test the projections at least monthly, determine a liquidity buffer, and maintain a contingency funding plan that identifies potential sources of liquidity strain and alternative sources of funding. Large foreign banking organizations with combined U.S. assets of $50 billion or more must meet liquidity risk-management standards that are broadly similar to the standards proposed for U.S. firms.	Federal Reserve final rule, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17, 240 (Mar. 27, 2014). The March 2014 final rule does not impose enhanced prudential standards on nonbank financial companies designated by FSOC for supervision by the Federal Reserve.
Enhanced liquidity requirements required under section 165(b)(1)(A)(ii)—Basel liquidity ratios: The banking agencies have proposed a liquidity coverage ratio requirement, consistent with the international liquidity standards published by the Basel Committee for large, internationally active banking organizations with more than $250 billion in assets, nonbank financial companies designated by FSOC for Federal Reserve supervision that do not have substantial insurance activities, and their consolidated subsidiary depository institutions with $10 billion or more in total consolidated assets. The Federal Reserve has proposed a modified liquidity coverage ratio for bank holding companies without significant insurance or commercial operations that have $50 billion or more in total consolidated assets.	Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) proposed rule, Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring, 78 Fed. Reg. 71,818 (Nov. 29, 2013).
Credit exposure reports required under section 165(d)(2): Section 165 also requires the Federal Reserve to impose credit exposure reporting requirements on bank holding companies with $50 billion or more in total consolidated assets, certain foreign banking organizations, and nonbank financial companies designated by FSOC. The joint proposed rule would require those companies to report credit exposures to other covered companies and credit exposures that other covered companies have to that company.	Federal Reserve and FDIC proposed rule, Resolution Plans and Credit Exposure Reports Required, 76 Fed. Reg. 22,648 (Apr. 22, 2011).
Concentration limits required under section 165(e): As required by the act, the Federal Reserve would prohibit bank holding companies with $50 billion or more in total consolidated assets, certain large foreign banking organizations and intermediate holding companies, and nonbank financial companies designated by FSOC from having credit exposure to any unaffiliated company that exceeds 25 percent of the company's capital stock and surplus or total consolidated regulatory capital. The Federal Reserve proposed a more stringent credit exposure limit of 10 percent between the largest, more complex financial institutions.	Proposal included in Jan. 5, 2012, proposed rule and Dec. 28, 2012, proposed rule.
Stress tests required under section 165(i): Bank holding companies with $50 billion or more in total consolidated assets, certain foreign banking organizations, and nonbank financial companies designated by FSOC are required by the act to conduct semi-annual company-run stress tests, and the Federal Reserve is required to conduct an annual stress test on each of those companies.[d] The final rule builds on the stress tests required under the capital plans that large, complex bank holding companies submitted to the Federal Reserve for supervision under the Supervisory Capital Assessment Program in 2009, the subsequent Comprehensive Capital and Analysis Review in 2011, and the capital plan rule effective Dec. 30, 2011.	Federal Reserve final rule for U.S. bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by FSOC for Federal Reserve supervision, Company-Run Stress Test Requirements, 77 Fed. Reg. 62,378 (Oct. 12, 2012). Federal Reserve final rule for foreign banking organizations, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17, 240 (Mar. 27, 2014).

Dodd-Frank Act provision	Rulemaking status
Resolution plans required under section 165(d)(1): Section 165 also requires the Federal Reserve to require resolution plans from bank holding companies with $50 billion or more in total consolidated assets, certain foreign banking organizations, and nonbank financial companies designated by FSOC. The joint final rule requires each plan to include, information about the company's ownership structure, core business lines, and critical operations, and a strategic analysis of how the SIFI can be resolved under the U.S. Bankruptcy Code in a way that would not pose systemic risk to the financial system.	Federal Reserve and FDIC final rule, Resolution Plans Required, 76 Fed. Reg. 67,323 (Nov. 1, 2011).
Debt-to-equity limits under section 165(j): Section 165(j) provides that the Federal Reserve must require bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies supervised by the Federal Reserve to maintain a debt-to-equity ratio of no more than 15-to-1, upon a determination by the Council that (i) such company poses a grave threat to the financial stability of the United States and (ii) the imposition of such a requirement is necessary to mitigate the risk that the company poses to U.S. financial stability. The final rules implement the 15-to-1 debt-to-equity limitation for U.S. bank holding companies and foreign banking organizations for which FSOC has made the grave-threat determination.	Federal Reserve final rule, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17, 240 (Mar. 27, 2014). The March 2014 final rule does not impose enhanced prudential standards on nonbank financial companies designated by FSOC for supervision by the Federal Reserve.
Early remediation requirements under section 166: Section 166 requires the Federal Reserve, in consultation with FSOC and FDIC, to prescribe regulations to provide for the early remediation of financial distress of bank holding companies with $50 billion or more in total consolidated assets, certain foreign banking organizations, and nonbank financial companies designated by FSOC. The proposed requirements would include a number of triggers for remediation, including capital levels, stress test results, and risk-management weaknesses. In certain situations, the Federal Reserve would impose restrictions on asset growth, acquisitions, capital distributions, executive compensation, and other activities that the Federal Reserve deems appropriate. The proposed rule for foreign banking organizations adapts these requirements to their U.S. operations, tailored to address the risks to U.S. financial stability posed by the U.S. operations of foreign banking organizations and taking into consideration their structure.	Proposal included in Jan. 5, 2012, proposed rule and Dec. 28, 2012, proposed rule.
FDIC Orderly Liquidation Authority—Title II gives FDIC new orderly liquidation authority to act as a receiver in the event of a failure of certain systemically important financial companies, including certain bank holding companies and nonbank financial companies that pose significant risk to the financial stability of the United States. The rule establishes a more comprehensive framework for the implementation of the liquidation authority and is intended to provide greater transparency to the process.	FDIC final rule, Certain Orderly Liquidation Authority Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 Fed. Reg. 41,626 (July 15, 2011).
Federal Reserve authority to impose mitigatory actions on certain nonbank financial companies determined to pose a grave threat to financial stability—Section 121(a) allows the Federal Reserve, with a two-thirds vote by FSOC, to impose certain additional restrictions on bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies designated by FSOC determined to pose a grave threat to the financial stability of the United States, including limiting mergers and acquisitions, requiring the company to terminate activities, or requiring the company to sell or transfer assets or off-balance-sheet items to unaffiliated entities.	No rules proposed or issued.

Dodd-Frank Act provision	Rulemaking status
Collins Amendment—Section 171(b) requires the appropriate federal banking agencies to establish permanent minimum risk-based capital and leverage floors on insured depository institutions, depository institution holding companies, and nonbank financial companies designated by FSOC. Under the final rule, these institutions must calculate their floors using the minimum risk-based capital and leverage requirements under the prompt corrective action framework implementing section 38 of the Federal Deposit Insurance Act.	Federal Reserve, FDIC, and OCC final rule , Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor, 76 Fed. Reg. 37,620 (June 28, 2011).
Concentration limit/ liability cap on large financial institutions—Section 622 establishes, subject to recommendations by FSOC, a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.	Federal Reserve proposed rule, Concentration Limits on Large Financial Companies, 79 Fed. Reg. 27,801 (May 15, 2014).[e]

Source: GAO analysis. | GAO-15-81

[a]Section 165 directs the Federal Reserve to impose enhanced prudential standards for bank holding companies with $50 billion or more in total consolidated assets, certain foreign banking organizations, and nonbank financial companies designated by FSOC regarding overall risk management, which also were proposed in the January 5, 2012 proposed rule..

[b]Bank systemically important financial institutions (SIFI) already must comply with the capital plan rule. The Federal Reserve issued its final capital plans rule on December 1, 2011 (see Capital Plans, 76 Fed. Reg. 74,631). On September 30, 2013, the Federal Reserve issued an interim final rule that amends the capital plan and stress test rules and clarifies how bank SIFIs must incorporate the new U.S. Basel III-based final capital rules into their capital plan submissions and stress tests. See Regulations Y and YY: Application of the Revised Capital Framework to the Capital Plan and Stress Test Rules, 78 Fed. Reg. 59,779.

[c]In November 2011, the Financial Stability Board identified 29 G-SIBs and indicated it would update this list annually each November. The Financial Stability Board last updated this list on November 11, 2013. The updated list contains 29 G-SIBs; the same eight U.S, bank SIFIs were designated as G-SIBs in 2011, 2012, and 2013.

[d]Section 165(i)(2) of the act requires that any bank holding company with more than $10 billion in total consolidated assets and that is regulated by a federal financial regulatory agency also be subject to company-run stress tests. The Federal Reserve issued a separate rule to implement this requirement. Annual Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion Other Than Covered Companies, 77 Fed. Reg. 62,396 (Oct. 12, 2012).

[e]In November 2014, subsequent to the close of our review period, the Federal Reserve finalized the rule implementing the large financial company concentration limits established in section 622 of the Dodd-Frank Act. See Concentration Limits on Large Financial Companies, 79 Fed. Reg. 68,095 (Nov. 14, 2014).

Appendix V: Trends in GAO Indicators for Bank Systemically Important Financial Institutions

As we first reported in December 2012, some provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and related rules may result in adjustments to the size, interconnectedness, complexity, leverage, or liquidity of systemically important financial institutions (SIFI) over time.[1] We developed indicators to monitor changes in some of these SIFI characteristics. The size and complexity indicators reflect the potential for a single company's financial distress to affect the financial system and economy. The leverage and liquidity indicators reflect a SIFI's resilience to shocks or its vulnerability to financial distress. We continue to focus our analysis on bank SIFIs, but we plan to develop indicators for nonbank SIFIs in future work.[2]

This analysis has limitations. For example, the indicators do not identify causal links between changes in SIFI characteristics and the act. Rather, the indicators track changes in the size, complexity, leverage, and liquidity of SIFIs since the Dodd-Frank Act was passed to examine whether the changes were consistent with the act. However, other factors—including the economic downturn, international banking standards agreed upon by the Basel Committee on Banking Supervision (Basel Committee), the European debt crisis, and monetary policy actions—also affect bank holding companies and, thus, the indicators.[3] These factors may have a greater effect on SIFIs than the Dodd-Frank Act. As discussed, some rules implementing SIFI-related provisions have not yet been finalized. Thus, trends in our indicators include the effects of these rules only insofar as SIFIs have changed their behavior in response to issued rules and in anticipation of expected rules. In this sense, our indicators provide baselines against which to compare future trends.

[1]GAO-13-101.

[2]Our analyses of bank SIFIs include U.S. bank holding companies with total consolidated assets of $50 billion or more and the U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more.

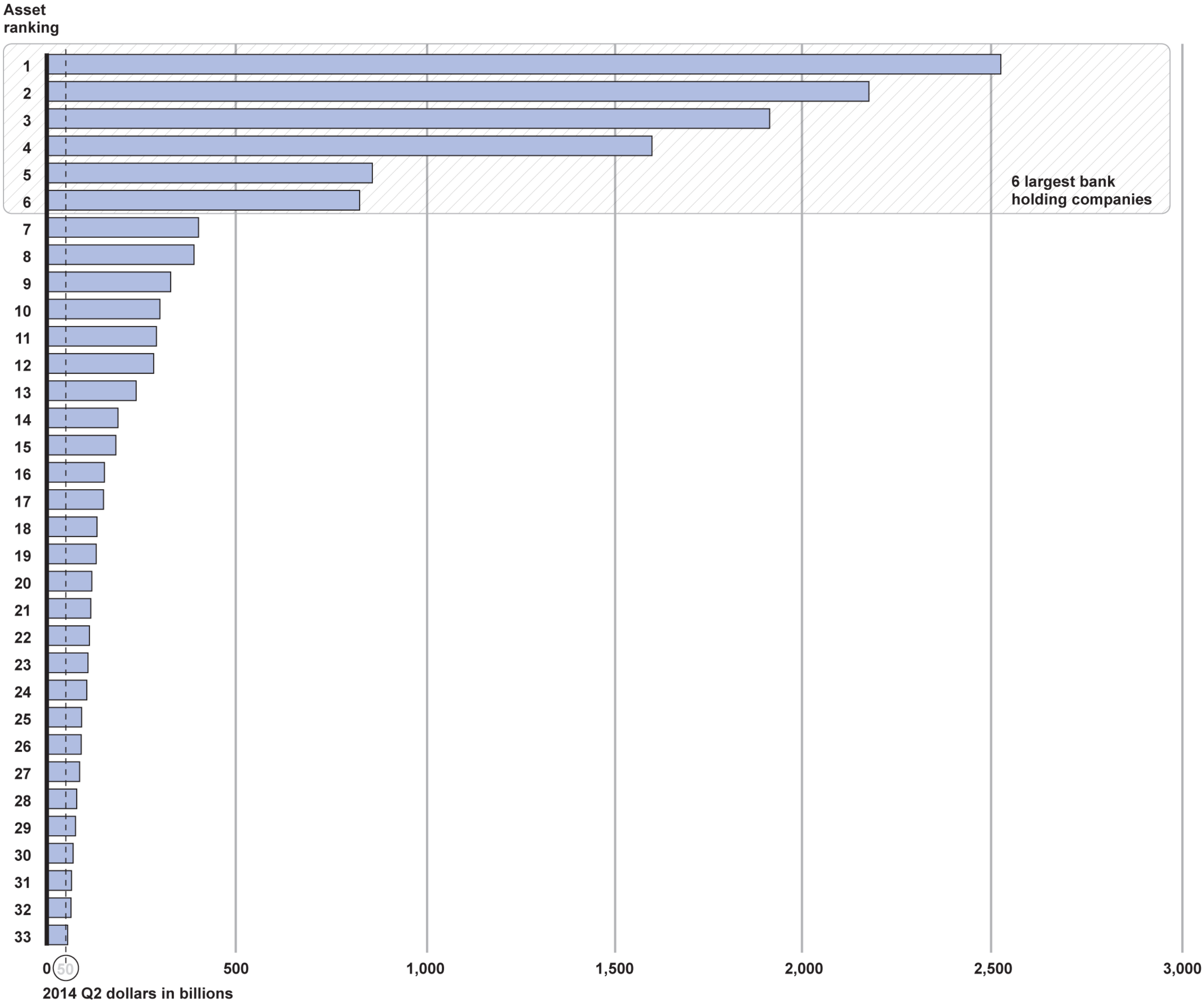
[3]The Basel Committee has agreed on a new set of risk-based capital, leverage, liquidity, and other requirements for banking institutions (Basel III requirements). Additionally, the Financial Stability Board and the Basel Committee have agreed on new capital and other requirements applicable to designated globally systemically important banks (G-SIB). U.S. banking regulators have implemented some of these requirements.

SIFI Size

We developed three indicators of size. The first tracks the number of bank SIFIs. The second measures a bank SIFI's size based on the total assets on its balance sheet. The third measures the extent to which industry assets are concentrated among the individual bank SIFIs, reflecting a bank SIFI's size relative to the size of the industry. However, these indicators do not include an institution's off-balance sheet activities and thus may understate the amount of financial services or intermediation an institution provides. Furthermore, asset size alone is not an accurate determinant of systemic risk, because an institution's systemic risk significance also depends on other factors, such as its complexity and interconnectedness. Finally, some bank SIFIs are U.S.-based bank holding company subsidiaries of foreign banking organizations, so the size of these bank SIFIs may not reflect the potential for the parent company's financial distress to affect the financial system and or the economy.

As shown in figure 3, there were 33 bank SIFIs in the second quarter of 2014. The figure also shows that six of the bank SIFIs $500 billion or more in total consolidated assets (to which we refer as large bank SIFIs) and were considerably larger than the other bank SIFIs.

Figure 3: Total Assets of U.S. Bank SIFIs, as of the Second Quarter of 2014 (Dollars in Billions)



Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Notes: We use the term "bank SIFI" to refer to U.S. bank holding companies with $50 billion or more in total consolidated assets. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. Bank SIFIs are ranked by assets as of the second quarter of 2014, with 1 being the bank SIFI with the greatest amount of assets and 33 being the bank SIFI with the least amount of assets.

Our indicators show that the number and size of bank SIFIs declined from the third quarter of 2010 through the second quarter of 2014, and several SIFIs increased their dominance of the market.

- Table 9 shows that the total number of bank SIFIs decreased by three over the period: (1) the number of large bank SIFIs decreased by one and (2) the number of other bank SIFIs decreased by two. In our December 2012 report, we noted that there were seven large SIFIs as of the second quarter of 2012. Six were large bank SIFIs as of the second quarter of 2014. The other large bank SIFI received regulatory approval to deregister as a bank holding company in February 2013.
- Table 9 also shows that the median assets for the bank SIFIs declined by about $25.5 billion (about 15 percent) over the period. However, median assets for large bank SIFIs increased from $1,302.9 billion to $1,754.3 billion, or by $451.4 (about 35 percent), in part because one of the large bank SIFIs did not file a FR Y-9C after the third quarter of 2012. Median assets for the other bank SIFIs decreased from $142.5 billion to $119.0 billion, or by $23.5 billion (about 16 percent).

Table 9: Number and Median Size of U.S. Bank Holding Companies and U.S. Bank SIFIs as of Third Quarter of 2010 and Second Quarters of 2011, 2012, 2013, and 2014 (Assets in Billions of Second Quarter 2014 Dollars)

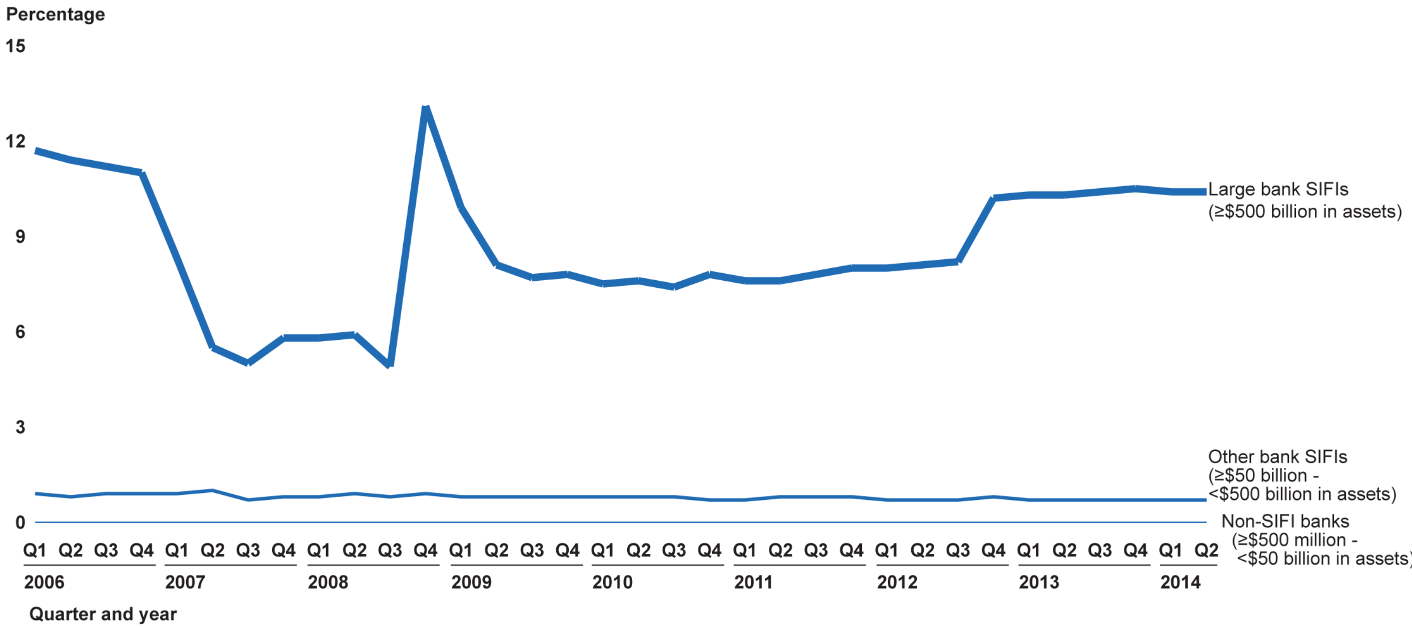
		2010 Q3	2011Q2	2012Q2	2013 Q2	2014 Q2
Total bank holding companies	Number	1,021	1,017	1,029	1,036	1,024
	Median assets	$1.0	$1.0	$1.0	$1.0	$1.0
Total bank SIFIs	Number	36	34	34	33	33
	Median assets	$175.4	$174.0	$168.5	$153.1	$149.9
Large bank SIFIs	Number	7	7	7	6	6
	Median assets	$1,302.9	$1,321.9	$1,378.6	$1,689.9	$1,754.3
Other bank SIFIs	Number	29	27	27	27	27
	Median assets	$142.5	$137.4	$120.8	$120.1	$119.0
Non-SIFI bank holding companies	Number	985	983	995	1,003	991
	Median assets	$1.0	$0.9	$0.9	$0.9	$1.0

Source: GAO analysis of data from the Federal Reserve Bank of Chicago and Bureau of Economic Analysis. | GAO-15-81

Notes: Median assets are adjusted for inflation and are measured in billions of constant second quarter 2014 dollars. We used data on top-tier U.S. bank holding companies that filed Form FR Y-9C, which is generally filed by top-tier U.S. bank holding companies with assets of $500 million or more, although a small number of U.S. bank holding companies with assets below that threshold also filed Form FR Y-9C. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We define large bank SIFIs as those with assets of $500 billion or more, other bank SIFIs as those with at least $50 billion but less than $500 billion in assets, and non-SIFI bank holding companies as those with assets less than $50 billion.

- Figure 4 shows that the median market share for large bank SIFIs increased from 7.4 percent to 10.4 percent (or by about 41 percent) of the industry's assets from the third quarter of 2010 through the second quarter of 2014. The median market share for the other bank SIFIs declined from 0.8 to 0.7 percent (or by about 12 percent) over the same period.

Figure 4: Median Market Share for U.S. Bank Holding Companies by Size, from First Quarter of 2006 through Second Quarter of 2013 (Percentage)



Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Notes: To calculate the median market shares, we calculated the market share for each bank holding company, and then reported the median market share for large bank SIFIs, the median for other bank SIFIs, and the median for non-SIFI banks. We used data on top-tier U.S. bank holding companies that filed Form FR Y-9C, which is generally filed by top-tier U.S. bank holding companies with assets of $500 million or more, although a small number of U.S. bank holding companies with assets below that threshold also filed Form FR Y-9C. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We define large bank SIFIs as those with assets of $500 billion or more, other bank SIFIs as those with at least $50 billion but less than $500 billion in assets, and non-SIFI bank holding companies as those with assets less than $50 billion.

SIFI Complexity

Our indicators of complexity are the number of legal entities of bank SIFIs, the percentage of foreign legal entities of large SIFIs, and the number of countries in which they are located. An institution's operational complexity may reflect an institution's diverse lines of business and locations in which the institution operates, which are reflected partly through its various legal structures. Consequently, a SIFI with a large number of legal entities—particularly foreign ones operating in different countries under different regulatory regimes—may be more difficult to resolve than a SIFI with fewer legal entities in fewer countries. One limitation of our indicator is that it does not provide information on the relative complexity of SIFIs resulting from engaging in a large number of business lines. Additionally, changes in the operational complexity of a SIFI may be reflected in our indicators only insofar as they result in a change in the number of legal entities. Finally, our indicators may not capture other relevant aspects of the complexity of a SIFI, such as complexity that could result from being a subsidiary of a foreign company.

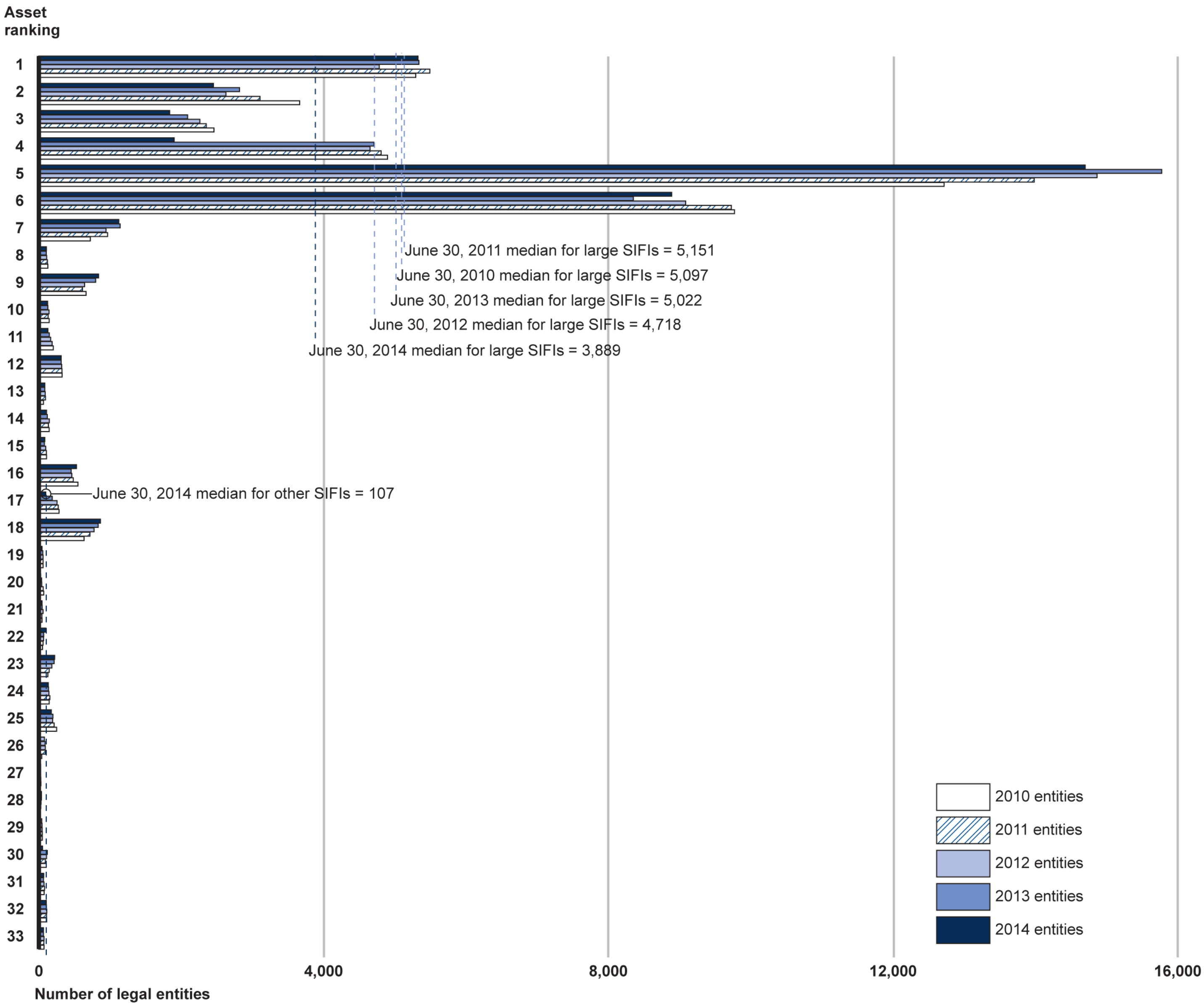
The complexity indicators continue to show that most large bank SIFIs have a relatively large number of legal entities compared with other bank SIFIs and that they operate in various countries.[4] They also show that some of the large bank SIFIs may be becoming less but others more complex:

- Figure 5 shows that the six large bank SIFIs in the second quarter of 2014 continued to have more than 1,800 legal entities, with two of the six having more than 8,000 and 14,000, respectively.[5] Four of the large SIFIs had fewer legal entities at the end of the second quarter of 2014 than they had at the end of the second quarter of 2010. The median number of legal entities for the large bank SIFIs decreased from 5,097 to 3,889 from the second quarter of 2010 to the second quarter of 2014. The median for the remaining 27 bank SIFIs also declined from 110 to 97 over the same period. Within this group, 21 of the 27 bank holding companies had less than 200 legal entities over the period.

[4]We note that nine of the other bank SIFIs are subsidiaries of foreign banking organizations, and our complexity indicator may not reflect the complexity associated with being part of a large global entity.

[5]We estimated the number of legal entities using the total number of records on a bank SIFIs organization hierarchy, which lists all of its subsidiaries, as of June 30 of each year, which we obtained from the National Information Center. This estimate represents the maximum possible number of legal entities and may overestimate the actual number of legal entities. For example, a bank SIFI may have two intermediate holding company subsidiaries that jointly own a subsidiary depository institution. In this case, the subsidiary depository institution will be counted twice.

Figure 5: Total Legal Entities of U.S. Bank Systemically Important Financial Institutions (SIFI), as of Second Quarter of Each Year from 2010 through 2014.



Source: GAO analysis of Federal Reserve Board data from the National Information Center. | GAO-15-81

Notes: Bank SIFIs are ranked by assets as of the second quarter of 2014, with 1 being the bank SIFI with the most assets and 33 being the bank SIFI with the least assets. We estimated the number of legal entities using the total number of records on a bank SIFIs organization hierarchy as reported by the National Information Center. The hierarchy lists all of the bank SIFIs subsidiaries, as of June 30 of each year. This estimate represents the maximum possible number of legal entities and may overestimate the actual number of legal entities. For example, a bank SIFI may have two intermediate holding company subsidiaries that jointly own a subsidiary depository institution. In this case, the subsidiary depository institution will be counted twice. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more.

- Table 10 shows that five of six large bank SIFIs continue to have a high number or percentage of foreign legal entities, and some may have become less complex but others more complex based on these indicators. For three large bank SIFIs, the percentage of legal entities located outside the United States increased from the second quarter of 2010 to the second quarter of 2014, but the number decreased. In contrast, for the other three large bank SIFIs, both the number and percentage of legal entities located outside the United States increased. Additionally, for two large SIFIs, the number of countries in which their foreign legal entities operated increased, but for the other four large SIFIs, the number decreased.

Table 10: Number and Percentage of Foreign Legal Entities of Large Bank Systemically Important Financial institutions (SIFI), as of Second Quarters of 2010, 2012, 2013, and 2014

	Total number of legal entities as of June 30				Number and percentage of foreign legal entities as of June 30				Number of countries where foreign entities were located as of June 30			
Bank SIFI rank	2010	2012	2013	2014	2010	2012	2013	2014	2010	2012	2013	2014
1	5,099	4,159	4,093	4,804	1,104 (22%)	808 (19%)	798 (19%)	1,404 (29%)	49	51	49	54
2	3,643	2,604	2,750	2,451	1,014 (28%)	669 (26%)	1,147 (42%)	961 (39%)	55	47	48	49
3	2,449	2,324	2,136	1,828	1,360 (56%)	1,237 (53%)	1,263 (59%)	1,057 (58%)	83	82	79	79
4	4,965	4,621	3,285	1,900	254 (5%)	207 (4%)	187 (6%)	129 (7%)	20	23	21	19
5	9,737	11,621	10,635	14,301	4,244 (44%)	5,986 (52%)	6,041 (57%)	7,675 (54%)	42	61	63	70
6	8,425	7,764	7,010	8,897	4,718 (56%)	4,177 (54%)	3,835 (55%)	5,806 (65%)	59	55	54	51

Source: GAO analysis of Federal Reserve data. | GAO-15-81

Note: Foreign entities are entities located outside of the 50 U.S. states and the District of Columbia. We define large bank SIFIs as those with assets of $500 billion or more. Bank SIFIs are ranked by assets as of the second quarter of 2014, with 1 being the bank SIFI with the most assets.

SIFI Leverage

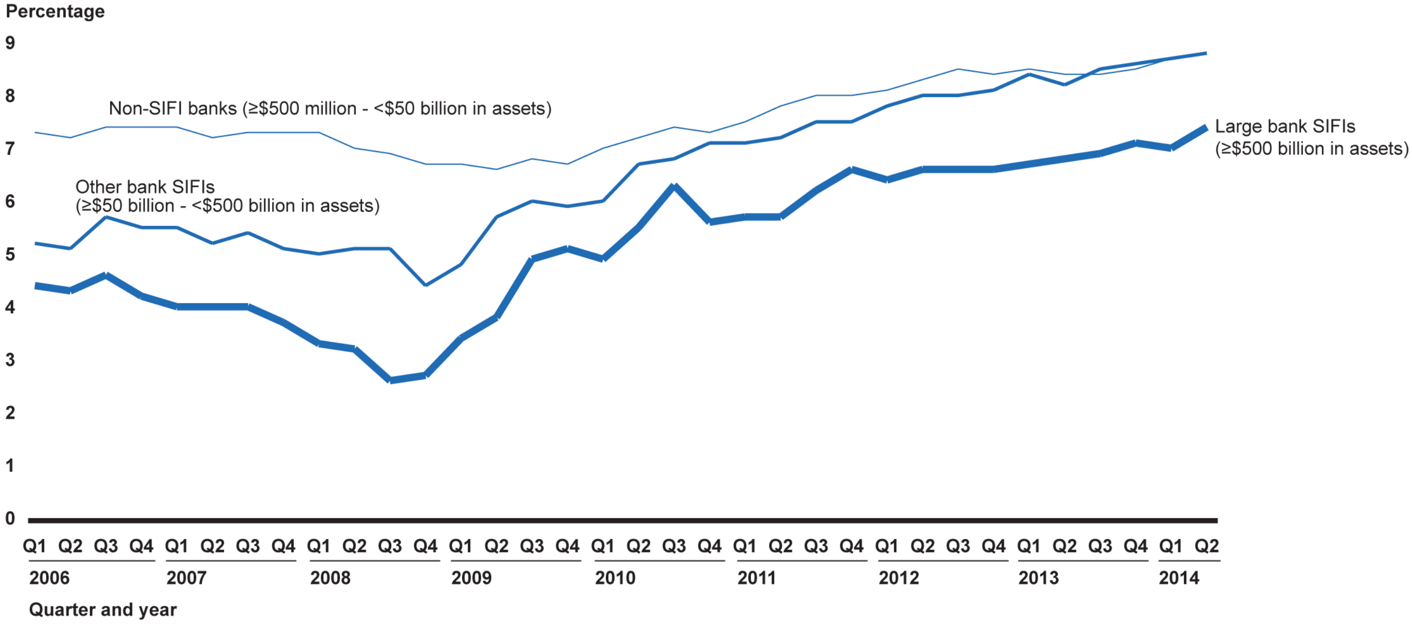
Although there are many ways to measure leverage, we use two measures: (1) tangible common equity as a percentage of total assets, and (2) total bank holding company equity as a percentage of total assets.[6] A limitation of both indicators is that they may not fully reflect an institution's exposure to risk because total assets do not reflect an institution's risk exposure from off-balance sheet activities and generally treat all assets as equally risky.

Our indicators suggest that large and other bank SIFIs' leverage has decreased since the third quarter of 2010.

- Figure 6 shows that median tangible common equity as a percentage of total assets generally continued its upward trend for large and other bank SIFIs from the third quarter of 2010 through the second quarter of 2014. For large bank SIFIs, the indicator increased from 6.3 to 7.4 percent (or by about 17 percent). For the other bank SIFIs, the indicator increased from 6.8 to 8.8 percent (by about 29 percent).

[6] In our December 2013 report, our leverage indicators included tangible common equity as a percentage of risk-weighted assets; see GAO-14-67. We used bank holding company data from Form FR Y-9C to construct this indicator. However, the definition of risk-weighted assets reported on Form FR Y-9C changed in the first quarter of 2014 for some bank holding companies. Thus, we cannot construct a consistent time series of this indicator.

Figure 6: Median Tangible Common Equity as a Percentage of Total Assets for U.S. Bank Holding Companies by Size, from First Quarter of 2006 through Second Quarter of 2014

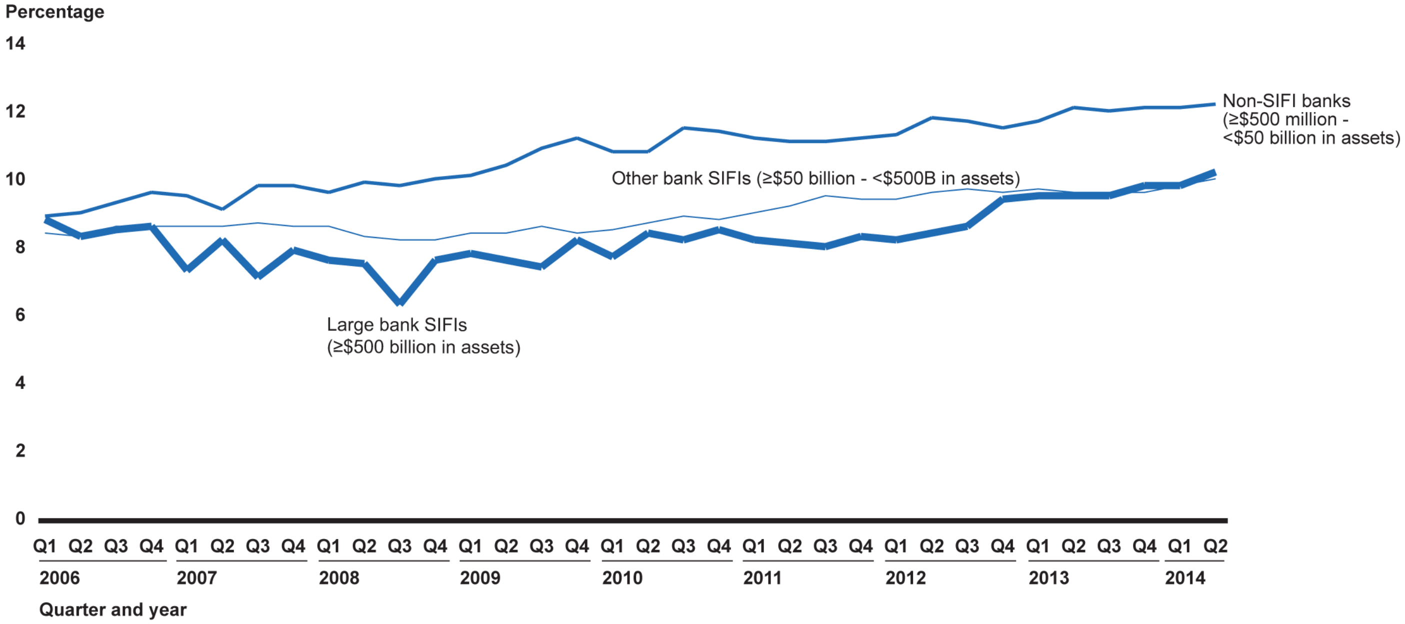


Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Note: To calculate median tangible common equity as a percentage of assets, we calculated this percentage for each bank holding company, and then reported the median for large bank systemically important financial institutions (SIFI), the median for other bank SIFIs, and the median for non-SIFI banks. We used data on top-tier U.S. bank holding companies that filed Form FR Y-9C, which is generally filed by top-tier U.S. bank holding companies with assets of $500 million or more, although a small number of U.S. bank holding companies with assets below that threshold also filed Form FR Y-9C. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We define large bank SIFIs as those with assets of $500 billion or more, other bank SIFIs as those with at least $50 billion but less than $500 billion in assets, and non-SIFI bank holding companies as those with assets less than $50 billion.

- Figure 7 shows that median total bank holding company equity as a percentage of total assets increased from the third quarter of 2010 through the second quarter of 2014. For large bank SIFIs, the indicator increased from 8.2 to 10.2 percent (or by about 24 percent). For the other SIFIs, the indicator increased from 11.5 to 12.2 percent (or by about 5 percent).

Figure 7: Median Total Bank Holding Company Equity as a Percentage of Total Assets for U.S. Bank Holding Companies, by Size, from First Quarter of 2006 through Second Quarter of 2014



Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Note: To calculate median total bank holding company equity as a percentage of total assets, we calculated this percentage for each bank holding company, and then reported the median for large bank systemically important financial institutions (SIFI), the median for other bank SIFIs, and the median for non-SIFI banks. We used data on top-tier U.S. bank holding companies that filed Form FR Y-9C, which is generally filed by top-tier U.S. bank holding companies with assets of $500 million or more, although a small number of U.S. bank holding companies with assets below that threshold also filed Form FR Y-9C. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We define large bank SIFIs as those with assets of $500 billion or more, other bank SIFIs as those with at least $50 billion but less than $500 billion in assets, and non-SIFI bank holding companies as those with assets less than $50 billion.

SIFI Liquidity

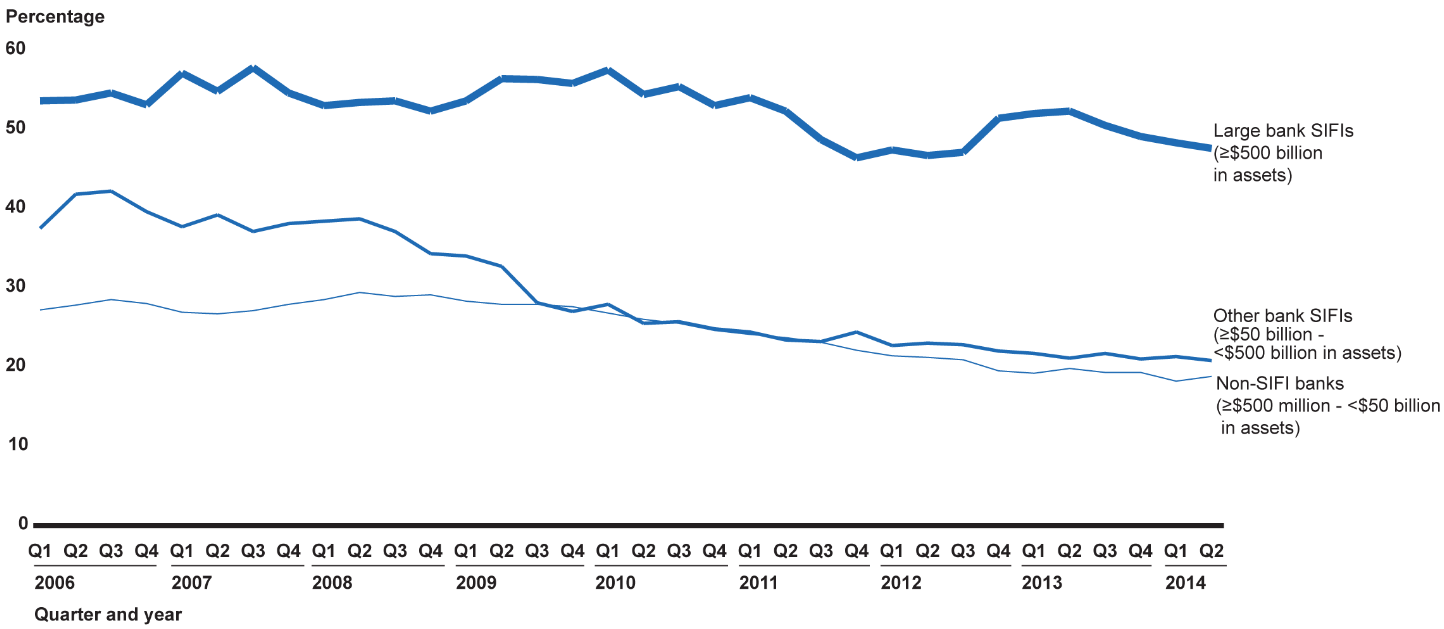
We developed two indicators to analyze changes in SIFI liquidity: (1) short-term liabilities as a percentage of total liabilities, and (2) liquid assets as a percentage of short-term liabilities. Short-term liabilities are balance sheet obligations due within 1 year; an institution’s short-term liabilities as a percentage of total liabilities are a measure of its need for liquidity. Liquid assets can be sold easily without affecting their price and, thus, can be converted easily to cash to cover debts that come due. Accordingly, liquid assets as a percentage of an institution’s short-term liabilities are a measure of access to liquidity. For example, if this percentage were under 100 percent, the institution did not have sufficient access to liquidity and was unlikely to have enough liquid assets to cover its short-term debt. A limitation of both indicators is that they do not include off-balance sheet liabilities, such as callable derivatives or potential derivatives-related obligations. The second indicator also does not include off-balance sheet liquid assets, such as short-term income from derivative contracts.[7]

Our indicators show that bank SIFIs' liquidity has improved from the third quarter of 2010 through the second quarter of 2014 (see figures 8 and 9). The figures also show that large bank SIFIs held relatively more short-term liabilities and liquid assets to cover such liabilities than other bank SIFIs.

- Figure 8 shows that median short-term liabilities as a percentage of total liabilities for large bank SIFIs decreased from 55.1 to 47.3 percent (or by about 14 percent). For the other bank SIFIs, the indicator decreased from 25.4 to 20.5 percent (by about 19 percent).

[7]Because these limitations affect both the numerator and the denominator of our indicators, we cannot determine whether the exclusion of off-balance sheet items results in an under- or an overstatement of an institution's liquidity need and access.

Figure 8: Median Short-Term Liabilities as a Percentage of Total Liabilities for U.S. Bank Holding Companies, by Size, from First Quarter of 2006 through Second Quarter of 2014

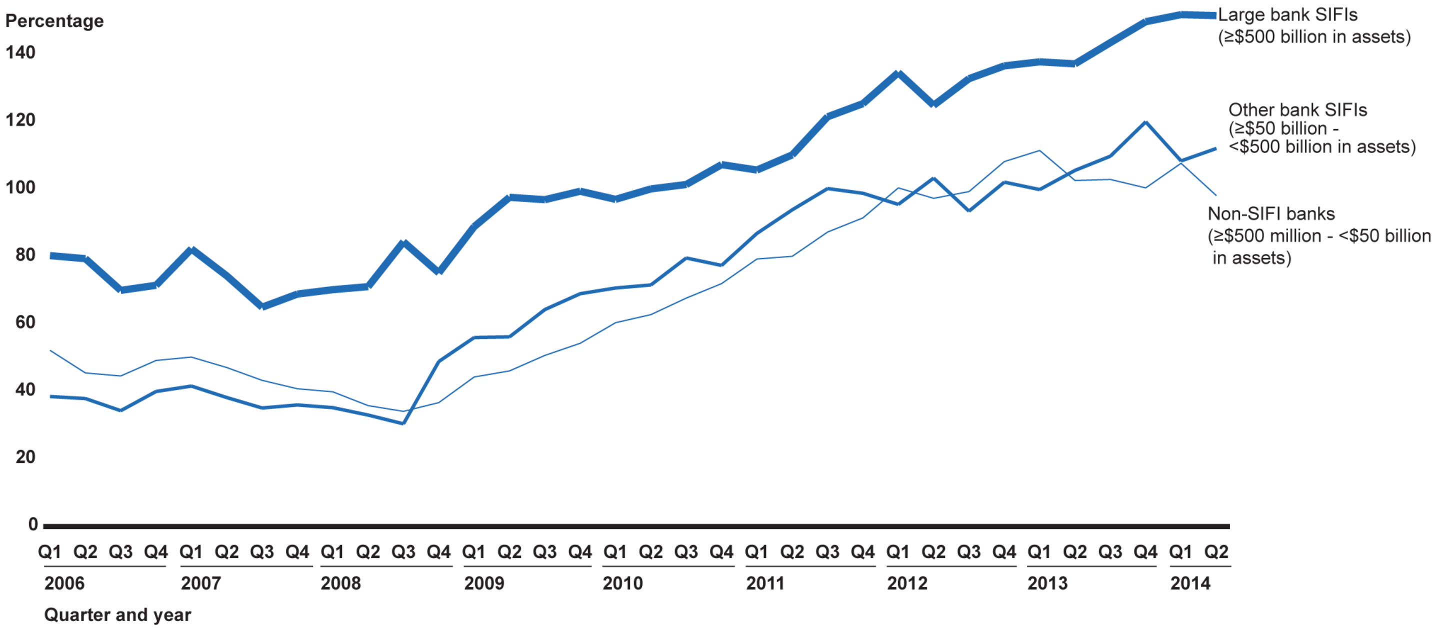


Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Note: To calculate median short-term liabilities as a percentage of total liabilities, we calculated this percentage for each bank holding company, and then reported the median for large bank systemically important financial institutions (SIFI), the median for other bank SIFIs, and the median for non-SIFI banks. We used data on top-tier U.S. bank holding companies that filed Form FR Y-9C, which is generally filed by top-tier U.S. bank holding companies with assets of $500 million or more, although a small number of U.S. bank holding companies with assets below that threshold also filed Form FR Y-9C. Our analysis includes nine U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We define large bank SIFIs as those with assets of $500 billion or more, other bank SIFIs as those with at least $50 billion but less than $500 billion in assets, and non-SIFI bank holding companies as those with assets less than $50 billion.

- Figure 9 shows that median short-term (or liquid) assets as a percentage of short-term liabilities generally continued an upward trend for both large and other SIFIs from the third quarter of 2010 through the second quarter of 2014. Specifically, the indicator increased from 100.7 to 150.8 percent (or by 50 percent) for large bank SIFIs and from 78.9 to 111.4 percent (or by 41 percent) for other bank SIFIs.

Figure 9: Median Liquid Assets as a Percentage of Short-term Liabilities for U.S. Bank Holding Companies, by Size, from First Quarter of 2006 through Second Quarter of 2014



Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Note: To calculate median liquid assets as a percentage of short-term liabilities, we calculated this percentage for each bank holding company, and then reported the median for large bank systemically important financial institutions (SIFI), the median for other bank SIFIs, and the median for non-SIFI banks. We used data on top-tier U.S. bank holding companies that filed Form FR Y-9C, which is generally filed by top-tier U.S. bank holding companies with assets of $500 million or more, although a small number of U.S. bank holding companies with assets below that threshold also filed Form FR Y-9C. Our analysis includes U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We define large bank SIFIs as those with assets of $500 billion or more, other bank SIFIs as those with at least $50 billion but less than $500 billion in assets, and non-SIFI bank holding companies as those with assets less than $50 billion.

Appendix VI: Econometric Analyses of the Impact of Enhanced Regulation and Oversight on Systemically Important Financial Institutions

We updated our econometric analysis assessing the impacts of new requirements in the Dodd- Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for bank holding companies with total consolidated assets of $50 billion or more—systemically important financial institutions or bank SIFIs—as they relate to (1) the cost of credit banks SIFIs provide and (2) their safety and soundness.

Methodology

Our multivariate econometric model uses a difference-in-difference design that exploits the fact that the Dodd-Frank Act subjects bank SIFIs to enhanced regulation by the Board of Governors of the Federal Reserve System (Federal Reserve) but not other holding companies, so we can view bank SIFIs as the treatment group and other bank holding companies as the control group. We compared the changes in the characteristics of bank SIFIs over time with changes in the characteristics of other bank holding companies over time. All else being equal, the difference in the differences is the impact of new requirements for bank SIFIs primarily tied to enhanced regulation and oversight under the Federal Reserve.

Our general econometric specification is the following:

$$y_{bq} = \alpha_b + \beta_q + \gamma SIFI_{bq} + X'_{bq}\Phi + \varepsilon_{bq},$$

where *b* denotes the bank holding company, *q* denotes the quarter, y_{bq} is the dependent variable, α_b is a bank holding company-specific intercept, β_q is a quarter-specific intercept, $SIFI_{bq}$ is an indicator variable that equals 1 if bank holding company *b* is a SIFI in quarter *q* and 0 otherwise, X_{bq} is a list of other independent variables, and ε_{bq} is an error term. We estimated the parameters of the model using quarterly data on top-tier bank holding companies that filed Form FR Y-9C from the first quarter of 2006 through the second quarter of 2014.

The parameter of interest is γ, the coefficient on the SIFI indicator, which is equal to 1 for bank holding companies with consolidated assets of $50 billion or more in the quarters starting with the treatment start date and is equal to zero otherwise. The Dodd-Frank Act was enacted in July 2010, so the treatment start date is the third quarter of 2010. Thus, the parameter γ measures the average difference in the difference in dependent variable between bank SIFIs and other bank holding companies before and after the Dodd-Frank Act was enacted.

We use different dependent variables (y_{bq}) to estimate the impacts of the new requirements for SIFIs on the cost of credit provided by bank SIFIs and on various aspects of bank SIFIs' safety and soundness, including capital adequacy, asset quality, earnings, and liquidity.

- **Funding cost.** A bank holding company's funding cost is the cost of deposits or liabilities that it then uses to make loans or otherwise acquire assets. More specifically, a bank holding company's funding cost is the interest rate it pays when it borrows funds. All else being equal, the greater a bank holding company's funding cost, the greater the interest rate it charges when it makes loans. We measure funding cost as an institution's interest expense as a percent of interest-bearing liabilities.

- **Capital adequacy.** Capital absorbs losses, promotes public confidence, helps restrict excessive asset growth, and provides protection to creditors. We use two alternative measures of capital adequacy: tangible common equity as a percent of total assets and total bank holding company equity as a percent of total assets.[1]

- **Asset quality.** Asset quality reflects the quantity of existing and potential credit risk associated with the institution's loan and investment portfolios and other assets, as well as off-balance sheet transactions. Asset quality also reflects the ability of management to identify and manage credit risk. We measure asset quality as performing assets as a percent of total assets, where performing assets are equal to total assets less assets 90 days or more past due and still accruing interest and assets in non-accrual status.

- **Earnings.** Earnings are the initial safeguard against the risks of engaging in the banking business and represent the first line of defense against capital depletion that can result from declining asset values. We measure earnings as net income as a percent of total assets.

[1]In the December 2013 report (GAO-14-67), we also measured capital adequacy using three additional alternative indicators: tangible common equity as a percent of risk-weighted assets, tier 1 capital as a percent of total assets, and tier 1 capital as a percent of risk-weighted assets. We constructed these indicators using quarterly data on bank holding companies from Form FR Y-9C. However, the definitions of risk-weighted assets and tier 1 capital reported on Form FR Y-9C changed in first quarter 2014. Thus, we cannot construct consistent time series of these indicators.

- **Liquidity.** Liquidity represents the ability to fund assets and meet obligations as they become due, and liquidity risk is the risk of not being able to obtain funds at a reasonable price within a reasonable time period to meet obligations as they become due. We use two different variables to measure liquidity. The first variable is liquid assets as a percent of volatile liabilities. This variable is similar in spirit to the liquidity coverage ratio introduced by the Basel Committee on Banking Supervision (Basel Committee) and measures a bank holding company's capacity to meet its liquidity needs under a significantly severe liquidity stress scenario. We measure liquid assets as the sum of cash and balances due from depository institutions, securities (less pledged securities), federal funds sold and reverse repurchases, and trading assets. We measure volatile (short-term) liabilities as the sum of federal funds purchased and repurchase agreements, trading liabilities (less derivatives with negative fair value), other borrowed funds, deposits held in foreign offices, and jumbo time deposits (deposits of $100,000 or more) held in domestic offices.

  The second liquidity variable is stable liabilities as a percent of total liabilities. This variable measures the extent to which a bank holding company relies on stable funding sources to finance its assets and activities. This variable is related in spirit to the net stable funding ratio introduced by the Basel Committee, which measures the amount of stable funding based on the liquidity characteristics of an institution's assets and activities over a 1-year horizon. We measure stable funding as total liabilities minus volatile liabilities as described earlier.

Finally, we include a limited number of independent variables (X_{bq}) to control for factors that may differentially affect SIFIs and non-SIFIs in the quarters since the Dodd-Frank Act was enacted. We include these variables to reduce the likelihood that our estimates are reflecting something other than the impact of the new Dodd-Frank Act requirements for SIFIs.

- **Securitization income.** Bank holding companies with more income from securitization are likely to have different business models than those with more income from traditional banking associated with an originate-to-hold strategy for loans. Changes in the market for securitized products since enactment of the Dodd-Frank Act thus may have had a greater effect on bank holding companies with more securitization income. If bank SIFIs typically have more securitization income than other bank holding companies, then changes in the market for securitized products since enactment may have differentially affected the two groups. We measure securitization income as the sum of net servicing fees, net securitization income, and interest and dividend income on mortgage-backed securities minus associated interest expense, and express securitization as a percent of operating revenue. Operating revenue is the sum of interest income and noninterest income less interest expense and loan loss provisions.

- **Nontraditional income.** Nontraditional income generally captures income from capital market activities. Bank holding companies with more nontraditional income are likely to have different business models than those with more income from traditional banking activities. Changes in capital markets since enactment of the Dodd-Frank Act may have had a greater effect on bank holding companies with more nontraditional income. If bank SIFIs typically have more nontraditional income than other bank holding companies, then changes in capital markets since enactment may have differentially affected the two groups. We measure nontraditional income as the sum of trading revenue; investment banking, advisory, brokerage, and underwriting fees and commissions; venture capital revenue; insurance commissions and fees; and interest income from trading assets less associated interest expense, and we express nontraditional income as a percent of operating revenue.

- **Foreign exposure.** Changes in other countries, such as the sovereign debt crisis in Europe, may have a larger effect on bank holding companies with more foreign exposure. If bank SIFIs typically have more foreign exposure than other bank holding companies, then changes in foreign markets may have differentially affected the two groups. We measure foreign exposure as the sum of foreign debt securities (held-to-maturity and available-for-sale), foreign bank loans, commercial and industrial loans to non-U.S. addresses, and foreign government loans and we express foreign exposure as a percent of total assets.

- **Size.** We include size because bank SIFIs tend to be larger than other bank holding companies, and market pressures or other forces not otherwise accounted for may have differentially affected large and small bank holding companies in the time since enactment of the Dodd-Frank Act. We measure the size of a bank holding company as the natural logarithm of its total assets.

- **Capital Purchase Program participation.** We control for whether or not a bank holding company participated in the Capital Purchase Program component of the Troubled Asset Relief Program to differentiate any impact that this program may have had from the impact of the Dodd-Frank Act.

We also conducted several sets of robustness checks:

- We restricted our sample to the set of institutions with assets that are “close” to the $50 billion cutoff for enhanced prudential regulation for bank SIFIs. Specifically, we analyzed two restricted samples of bank holding companies: (1) bank holding companies with assets between $25 billion and $75 billion and (2) bank holding companies with assets between $1 billion and $100 billion.
- We examined different treatment start dates. Specifically, we allowed the Dodd-Frank Act’s new requirements for SIFIs to have an impact in the third quarter of 2009, 1 year before the passage of the act. We did so to allow for the possibility that institutions began to react to the act’s requirements in anticipation of the act being passed.
- We allowed the effect of the treatment to vary by quarter.

Data

We conducted our analysis using quarterly data on top-tier U.S. bank holding companies and the top-tier U.S.-based bank holding company subsidiaries of foreign banking organizations that filed Form FR Y-9C obtained from the Federal Reserve Bank of Chicago from the first quarter of 2006 through the second quarter of 2014.

Results

While some of the SIFI-related rulemakings have yet to be implemented, our estimates are suggestive of the initial effects of the Dodd-Frank Act on bank SIFIs and provide a baseline against which to compare future results. Our baseline estimates suggest that the Dodd-Frank Act has not been associated with a significant change in funding costs of bank SIFIs (see table 11). To the extent that the cost of credit provided by bank SIFIs is a function of their funding costs, the new requirements for SIFIs are likely to have had little effect on the cost of credit to date.

Table 11: Estimated Changes in Bank Systemically Important Financial Institutions' (SIFI) Funding Costs and Measures of Safety and Soundness Associated with the Dodd-Frank Act, from Third Quarter 2010 through Second Quarter 2014 (Percentage Points)

	Cost of credit	Safety and soundness					
	Funding cost	Capital adequacy		Asset quality	Earnings	Liquidity	
	Interest expense as a percentage of interest-bearing liabilities	Tangible common equity as a percentage of total assets	Total bank holding company equity as a percentage of total assets	Performing assets as a percentage of total assets	Earnings as a percentage of total assets	Liquid assets as a percentage of short-term liabilities	Long-term liabilities as a percentage of total liabilities
1. Baseline model (1,474 bank holding companies and 34,309 observations)							
Estimated change	0.02	1.62***	0.57*	0.38***	0.08***	-1.53	5.18***
	(0.01)	(0.21)	(0.30)	(0.12)	(0.03)	(10.17)	(1.02)
	[0.92]	[0.08]	[0.04]	[0.29]	[0.15]	[0.24]	[0.31]
2. Sample restricted to bank holding companies with assets $25-75 billion (35 bank holding companies and 536 observations)							
Estimated change	-0.01	0.18	-0.58	0.97*	0.06	57.28***	2.60
	(0.04)	(0.62)	(0.88)	(0.51)	(0.10)	(17.24)	(1.60)
	[0.87]	[0.47]	[0.17]	[0.70]	[0.30]	[0.41]	[0.73]
3. Sample restricted to bank holding companies with assets $1-100 billion (718 bank holding companies and 15,148 observations)							
Estimated change	-0.01	1.21***	0.59*	0.57***	0.10**	-1.50	4.65***
	(0.02)	(0.23)	(0.35)	(0.16)	(0.04)	(16.20)	(1.76)
	[0.93]	[0.12]	[0.06]	[0.32]	[0.15]	[0.24]	[0.38]
4. *Impact of the Dodd-Frank Act anticipated enactment by 1 year (1,474 bank holding companies and 34,308 observations)*							
Estimated change	-0.02	1.71***	0.76**	0.35***	0.13***	8.43	6.18***
	(0.02)	(0.24)	(0.33)	(0.13)	(0.03)	(10.71)	(1.05)
	[0.92]	[0.08]	[0.04]	[0.29]	[0.15]	[0.24]	[0.31]

Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Notes: We analyzed data for top-tier U.S. bank holding companies that filed Form FR Y-9C from the first quarter of 2006 through the second quarter of 2014. We defined bank SIFIs as bank holding companies with assets of $50 billion or more. Our analyses includes U.S. bank holding companies with total consolidated assets of $50 billion or more and the U.S.-based bank holding company subsidiaries of foreign banking organizations that on their own have total consolidated assets of $50 billion or more. We estimated the effects of the new SIFI requirements on bank SIFIs by regressing the variables listed in the table on indicators for each bank holding company, indicators for each quarter, indicators for whether a bank holding company is a SIFI for quarters from the third in 2010 through the second in 2014, and other variables controlling for size, foreign exposure, securitization income, other nontraditional income, and participation in the Troubled Asset Relief Program. Estimated changes are the coefficients on the indicators for whether a bank holding company is a SIFI in quarters from the third in 2010 through the second in 2014. *=estimate is statistically significant at the 10 percent level. **=estimate is statistically significant at the 5 percent level. ***=estimate is statistically significant at the 1 percent level. Clustered standard errors are in parentheses. Within R-squareds are in square brackets.

Our estimates also suggest that the Dodd-Frank Act is associated with improvements in some measures of bank SIFIs' safety and soundness. Bank SIFIs appear to be holding more capital than they otherwise would have held since Dodd-Frank enactment (see "Baseline" panel in table 11). The quality of assets on the balance sheets of bank SIFIs seems to have improved since enactment. The act is also associated with improved liquidity as measured by the extent to which a bank holding company is using stable sources of funding and with higher earnings. However, liquidity as measured by the capacity of a bank holding company's liquid assets to cover its volatile liabilities has not clearly improved since enactment. Thus, the Dodd-Frank Act appears to be associated with improvements in some indicators of safety and soundness for bank SIFIs (relative to non-SIFI bank holding companies) but not others.

Our approach allows us to partially differentiate changes in funding costs, capital adequacy, asset quality, earnings, and liquidity associated with the Dodd-Frank Act from changes due to other factors. However, several factors make isolating and measuring the impact of the Dodd-Frank requirements for SIFIs challenging. The effects of the act cannot be differentiated from the effects of simultaneous changes in economic conditions, such as the pace of the recovery from the recent recession, or regulations, such as those stemming from Basel III, or other changes, such as in credit ratings that differentially may affect bank SIFIs and other bank holding companies. In addition, some of the new requirements for SIFIs have yet to be implemented. Nevertheless, our estimates are suggestive of the initial effects of the Dodd-Frank Act on bank SIFIs and provide a baseline against which to compare future trends.

The results of our robustness checks are as follows:

- Our results for funding costs and asset quality are generally robust to restricting the set of bank holding companies we analyze to those with assets of $25 billion to $75 billion, but our results for capital adequacy, earnings, and liquidity are not.

- Our results are generally robust to restricting the set of bank holding companies we analyze to those with assets of $1 billion to $100 billion.

- Our results are generally robust to starting the treatment in the third quarter of 2009, 1 year before the passage of the Dodd-Frank Act. This finding is consistent with the idea that bank holding companies began to change their behavior in anticipation of the act's requirements, perhaps as information about the content of the act became available and the likelihood of its passage increased. However, there may be other explanations, including anticipation of Basel III requirements, reactions to stress tests, and market pressures to improve capital adequacy and liquidity.

- Our results for capital adequacy as measured by tangible common equity as a percent of assets and for liquidity are generally robust to allowing the treatment effect to vary by quarter (see table 12). However, our results for funding costs suggest that the Dodd-Frank Act may be associated with higher funding costs in recent quarters and that it may not be associated with improvements in asset quality, earnings, or capital adequacy as measured by equity as a percent of total assets in every quarter.

Table 12: Estimated Changes in Bank Systemically Important Financial Institutions' (SIFI) Funding Cost and Safety and Soundness Indicators Associated with the Dodd-Frank Act, by Quarter from Third Quarter 2010 through Second Quarter 2014

	Cost of credit	Safety and soundness					
	Funding cost	Capital adequacy		Asset quality	Earnings	Liquidity	
Estimated change in	Interest expense as a percentage of interest-bearing liabilities	Tangible common equity as a percentage of total assets	Total bank holding company equity as a percentage of total assets	Performing assets as a percentage of total assets	Earnings as a percentage of total assets	Liquid assets as a percentage of short-term liabilities	Long-term liabilities as a percentage of total liabilities
2010Q3	-0.02	1.07***	0.65**	0.37***	0.13***	7.17	3.76***
	(0.02)	(0.20)	(0.27)	(0.14)	(0.03)	(7.17)	(0.89)
2010Q4	0.01	1.47***	0.92***	0.43***	0.22***	7.56	3.85***
	(0.02)	(0.21)	(0.29)	(0.13)	(0.04)	(7.37)	(0.95)
2011Q1	0.02	1.47***	0.69**	0.44***	0.13***	-1.40	3.25***
	(0.02)	(0.22)	(0.29)	(0.13)	(0.03)	(7.96)	(1.04)
2011Q2	0.02	1.40***	0.51*	0.54***	0.13***	0.49	4.07***
	(0.02)	(0.22)	(0.30)	(0.12)	(0.04)	(8.21)	(1.02)
2011Q3	0.00	1.35***	0.43	0.54***	0.12***	4.59	5.65***
	(0.02)	(0.22)	(0.31)	(0.12)	(0.03)	(9.22)	(1.08)
2011Q4	0.01	1.47***	0.41	0.41***	0.03	-2.90	6.05***
	(0.02)	(0.23)	(0.33)	(0.13)	(0.10)	(10.30)	(1.19)
2012Q1	0.03	1.71***	0.52	0.47***	0.05	-4.59	5.45***
	(0.02)	(0.21)	(0.34)	(0.12)	(0.03)	(11.84)	(1.25)
2012Q2	0.04**	1.64***	0.44	0.48***	0.02	-4.28	5.66***
	(0.02)	(0.25)	(0.38)	(0.14)	(0.03)	(11.42)	(1.19)

	Cost of credit	Safety and soundness					
	Funding cost	Capital adequacy		Asset quality	Earnings	Liquidity	
Estimated change in	Interest expense as a percentage of interest-bearing liabilities	Tangible common equity as a percentage of total assets	Total bank holding company equity as a percentage of total assets	Performing assets as a percentage of total assets	Earnings as a percentage of total assets	Liquid assets as a percentage of short-term liabilities	Long-term liabilities as a percentage of total liabilities
2012Q3	0.03*	1.57***	0.32	0.42***	0.05	-3.09	5.67***
	(0.02)	(0.24)	(0.37)	(0.14)	(0.04)	(12.59)	(1.21)
2012Q4	0.01	1.69***	0.46	0.37**	0.11*	-11.05	5.73***
	(0.03)	(0.25)	(0.37)	(0.16)	(0.06)	(12.82)	(1.24)
2013Q1	0.03**	1.74***	0.54	0.30*	0.07	-15.67	5.37***
	(0.02)	(0.26)	(0.37)	(0.15)	(0.05)	(12.40)	(1.28)
2013Q2	0.04**	1.92***	0.70**	0.27*	(0.06)	-7.67	5.97***
	(0.02)	(0.26)	(0.34)	(0.15)	(0.10)	(12.54)	(1.23)
2013Q3	0.03**	1.95***	0.71**	0.21	0.03	-1.72	5.91***
	(0.02)	(0.26)	(0.33)	(0.15)	(0.03)	(13.34)	(1.22)
2013Q4	0.04**	2.06***	0.70*	0.24	0.05	-0.81	6.20***
	(0.02)	(0.26)	(0.37)	(0.15)	(0.03)	(12.89)	(1.25)
2014Q1	0.04**	1.82***	0.58*	0.25*	0.11**	-5.79	5.29***
	(0.02)	(0.27)	(0.35)	(0.15)	(0.05)	(14.23)	(1.29)
2014Q2	0.04**	1.75***	0.46	0.22	0.06*	9.72	5.81***
	(0.02)	(0.28)	(0.38)	(0.16)	(0.03)	(15.86)	(1.33)
Within R-squared	0.92	0.08	0.04	0.29	0.15	0.24	0.31
Number of bank holding companies							1,474
Observations							34,309

Source: GAO analysis of data from the Federal Reserve Bank of Chicago. | GAO-15-81

Notes: We analyzed data for top-tier bank holding companies that filed Form FR Y-9C from the first quarter of 2006 through the second quarter of 2014. We estimated the effects of the new SIFI requirements on bank SIFIs by regressing the variables listed in the table on indicators for each bank holding company, indicators for each quarter, indicators for whether a bank holding company is a SIFI in each quarter from the third in 2010 through the second in 2014, and other variables controlling for size, foreign exposure, securitization income, other nontraditional income, and participation in the Troubled Asset Relief Program. Estimated changes are the coefficients on the indicators for whether a bank holding company is a SIFI in quarters from the third in 2010 through the second in 2014. *=estimate is statistically significant at the 10 percent level. **=estimate is statistically significant at the 5 percent level. ***=estimate is statistically significant at the 1 percent level. Clustered standard errors are in parentheses.

Appendix VII: Dodd-Frank Act Rules Implementing Central Clearing, Capital, and Margin Swap Reforms

The following tables list select rules that implement sections of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) related to central clearing requirements for swaps and security-based swaps, and margin and capital requirements for swaps entities and security-based swaps, as of July 22, 2014.

Table 13: Select Dodd-Frank Act Rules Implementing Central Clearing Swap Reforms Final as of July 22, 2014

Rulemaking	Responsible regulator	Published date	Effective date
Process for Review of Swaps for Mandatory Clearing	CFTC	7/25/2011	9/26/2011
Derivatives Clearing Organization Operations, Standards, and Risk Management	CFTC	11/8/2011	1/9/2012
Derivatives Clearing Organization General Provisions and Core Principles	CFTC	11/8/2011	1/9/2012
Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management	CFTC	4/9/2012	10/1/2012
Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies	SEC	7/13/2012	8/13/2012
End-User Exception to the Clearing Requirement for Swaps	CFTC	7/19/2012	9/17/2012
Swap Transaction Compliance and Implementation Schedule: Clearing Requirement under Section 2(h) of CEA	CFTC	7/30/2012	9/28/2012
Clearing Agency Standards	SEC	11/22/2012	1/2/2013
Clearing Requirement Determination under Section 2(h) of CEA	CFTC	12/13/2012	2/11/2013
Clearing Exemption for Swaps between Certain Affiliated Entities	CFTC	4/11/2013	6/10/2013
Core Principles and Other Requirements for Swap Execution Facilities	CFTC	6/4/2013	8/5/2013
Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations	CFTC	8/15/2013	10/15/2013
Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule	Federal Reserve, OCC	10/11/2013	1/1/2014
Derivatives Clearing Organizations and International Standards	CFTC	12/2/2013	12/31/2013
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	CFTC	1/31/2014	4/1/2014
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	FDIC, Federal Reserve, OCC, SEC	1/31/2014	4/1/2014

Source: GAO analysis of Dodd-Frank Act, Federal Register documents. | GAO-15-81

Note: CFTC is the Commodity Futures Trading Commission, FDIC is the Federal Deposit Insurance Corporation, Federal Reserve is the Board of Governors of the Federal Reserve System, OCC is the Office of the Comptroller of the Currency, SEC is the Securities and Exchange Commission, and CEA is the Commodity Exchange Act. As of July 22, 2014, SEC had not yet proposed rules requiring central clearing for any security-based swap.

Table 14: Select Dodd-Frank Act Rules Implementing Capital and Margin Swap Reforms Proposed as of July 22, 2014

Rulemaking	Responsible regulator	Rule status	Published date
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants	CFTC	Proposed	4/28/2011
Margin and Capital Requirements for Covered Swap Entities	Farm Credit Administration, FDIC, FHFA, Federal Reserve, OCC	Proposed	5/11/2011
Capital Requirements of Swap Dealers and Major Swap Participants	CFTC	Proposed	5/12/2011
Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of CEA	CFTC	Proposed	9/20/2011
Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers; Proposed Rule	SEC	Proposed	11/23/2012

Source: GAO analysis of Dodd-Frank Act, Federal Register documents. | GAO-15-81

Note: CFTC is the Commodity Futures Trading Commission, FDIC is the Federal Deposit Insurance Corporation, FHFA is the Federal Housing Finance Agency, Federal Reserve is the Board of Governors of the Federal Reserve System, OCC is the Office of the Comptroller of the Currency, SEC is the Securities and Exchange Commission, and CEA is the Commodity Exchange Act.

Appendix VIII: Comments from the Commodity Futures Trading Commission

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5521
www.cftc.gov

Office of the Chairman

Timothy G. Massad
Chairman

December 11, 2014

Ms. A. Nicole Clowers
Director
Financial Markets and Community Investment
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Clowers:

Thank you for providing us the opportunity to review and comment on the GAO's draft report entitled *Dodd-Frank Regulations: Regulators' Analytical and Coordination Efforts* (GAO-15-81). We appreciate the GAO's work on this important matter and the courtesy and consideration you have shown to the CFTC staff in conducting this study.

We have transmitted separately a few specific comments on the factual portions of this draft report. As the draft report indicates, the federal financial regulatory agencies, including the CFTC, recognize the importance of interagency and international coordination in implementing the provisions of the Dodd-Frank Act. Based on that understanding, we at the CFTC are continuing to work closely with the SEC and other domestic regulators to coordinate our work and align our rules as much as possible. The chairs and staff of the CFTC and SEC talk regularly in order to coordinate efforts. We are also working with our international counterparts to harmonize the rules across borders as much as possible, consistent with our statutory responsibilities. While our goal remains harmonization, there will inevitably be some regulatory variation in different jurisdictions, given differences in statutory mandates, regulatory frameworks, market concerns, regulatory philosophies, and political processes.

It should be kept in mind that Congress mandated that the CFTC complete its rules generally within a year. Thus, the international task is complicated by the fact that we completed most of our rules faster than other jurisdictions. Indeed, many other jurisdictions are still working on their rules. In addition, in the United States the CFTC was given primary responsibility for the swaps market which heightened the importance of us moving quickly. By contrast, the swaps activity regulated by the SEC, which is a relatively small part of the swaps market, is one of only many challenging tasks given to the SEC under Dodd Frank.

Nevertheless, we have made progress on many fronts - and we will continue to coordinate and consult with other regulators to ensure regulatory consistency to the extent possible.

Thank you once again for the opportunity to review and comment on the draft report. I am committed to improving CFTC's regulatory processes. GAO's continuing work in this area will assist us in our continuing effort to improve those processes as we implement the Dodd-Frank Act.

Sincerely,

Timothy Massad

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Appendix IX: Comments from the National Credit Union Administration

National Credit Union Administration

December 5, 2014

A. Nicole Clowers
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Clowers:

We reviewed a draft of the U.S. Government Accountability Office's report entitled *DODD-FRANK REGULATIONS: Regulators' Analytical and Coordination Efforts* (GAO-15-81).

NCUA has had very limited rulemaking responsibilities under the Dodd Frank Act and was not a participant in the two rulemakings used as case studies in the report. Nevertheless, we will carefully review the proposed strategies to enhance rulemaking analytics.

Thank you for the opportunity to comment.

Sincerely,

Mark Treichel

Mark Treichel
Executive Director

1775 Duke Street - Alexandria, VA 22314-3428 - 703-518-6300

Appendix X: GAO Contact and Staff Acknowledgments

GAO Contact

A. Nicole Clowers, (202) 512-8678, clowersa@gao.gov

Staff Acknowledgments

In addition to the contact named above, Stefanie Jonkman (Assistant Director), John Forrester (analyst in charge), Bethany Benitez, Pamela Davidson, Rachel DeMarcus, Timothy Guinane, Courtney LaFountain, Robert Letzler, Vincent Lui, Daniel McKenna, Marc Molino, and Barbara Roesmann made key contributions to this report.

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