

Public Law 112–88
112th Congress

An Act

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes.

Jan. 3, 2012
[H.R. 2056]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INSPECTOR GENERAL STUDY.

(a) **STUDY.**—The Inspector General of the Federal Deposit Insurance Corporation (FDIC) shall conduct a comprehensive study on the impact of the failure of insured depository institutions.

(b) **DEFINITIONS.**—For purposes of this Act—

(1) the term “insured depository institution” has the meaning given such term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

(2) the term “private equity company” has the meaning given the terms “hedge fund” and “private equity fund” in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(c) **MATTERS TO BE STUDIED.**—In conducting the study under this section, the Inspector General shall address the following:

(1) **LOSS-SHARING AGREEMENTS.**—The effect of loss-sharing agreements (LSAs), including—

(A) the impact of loss-sharing on the insured depository institutions that survive and the borrowers of insured depository institutions that fail, including—

(i) the impact on the rate of loan modifications and adjustments;

(ii) whether more types of loans (such as commercial (including land development and 1- to 4-family residential and commercial construction loans), residential, or small business loans) could be modified with fewer LSAs, or if LSAs could be phased out altogether;

(iii) the FDIC’s policies and procedures for monitoring LSAs, including those designed to ensure institutions are not imprudently selling assets at a depressed value;

(iv) the impact on the availability of credit; and

(v) the impact on loans with participation agreements outstanding with other insured depository institutions;

(B) the FDIC’s policies and procedures for terminating LSAs and mitigating the risk of acquiring institutions having substantial assets remaining in their portfolio when the LSAs are due to expire;

(C) the extent to which LSAs provide incentives for loan modifications and other means of increasing the probability of commercial assets being considered “performing”;

(D) the nature and extent of differences for modifying residential assets and working out commercial real estate under LSAs; and

(E) methods of ensuring the orderly end of expiring LSAs to prevent any adverse impact on borrowing, real estate industry and the Depositors Insurance Fund.

(2) LOSSES.—The significance of losses, including—

(A) the number of insured depository institutions that have been placed into receivership or conservatorship due to significant losses arising from loans for which all payments of principal, interest, and fees were current, according to the contractual terms of the loans;

(B) the impact of significant losses arising from loans for which all payments of principal, interest, and fees were current, according to the contractual terms of the loans, on the ability of insured depository institutions to raise additional capital;

(C) the effect of changes in the application of fair value accounting rules and other accounting standards, including the allowance for loan and lease loss methodology, on insured depository institutions, specifically the degree to which fair value accounting rules and other accounting standards have led to regulatory action against banks, including consent orders and closure of the institution; and

(D) whether field examiners are using appropriate appraisal procedures with respect to losses arising from loans for which all payments of principal, interest, and fees were current, according to the contractual terms of the loans, and whether the application of appraisals leads to immediate write downs on the value of the underlying asset.

(3) APPRAISALS.—

(A) The number of insured depository institutions placed into receivership or conservatorship due to asset write-downs and the policies and procedures for evaluating the adequacy of an insured depository institution’s allowance for loan and lease losses.

(B) The policies and procedures examiners use for evaluating the appraised values of property securing real estate loans and the extent to which those policies and procedures are followed.

(C) FDIC field examiner implementation of guidance issued December 2, 2010, titled “Agencies Issue Final Appraisal and Evaluation Guidelines”.

(4) CAPITAL.—

(A) The factors that examiners use to assess the adequacy of capital at insured depository institutions, including the extent to which the quality and risk profile of the insured institution’s loan portfolio is considered in the examiners’ assessment.

(B) The number of applications received by the FDIC from private capital investors to acquire insured depository institutions in receivership, the factors used by the FDIC

in evaluating the applications, and the number of applications that have been approved or not approved, including the reasons pertaining thereto.

(C) The policies and procedures associated with the evaluation of potential private investments in insured depository institutions and the extent to which those policies and procedures are followed.

(5) WORKOUTS.—The success of FDIC field examiners in implementing FDIC guidelines titled “Policy Statement on Prudent Commercial Real Estate Loan Workouts” (October 31, 2009) regarding workouts of commercial real estate, including—

(A) whether field examiners are using the correct appraisals; and

(B) whether there is any difference in implementation between residential workouts and commercial (including land development and 1- to 4-family residential and commercial construction loans) workouts.

(6) ORDERS.—The application and impact of consent orders and cease and desist orders, including—

(A) whether such orders have been applied uniformly and fairly across all insured depository institutions;

(B) the reasons for failing to apply such orders uniformly and fairly when such failure occurs;

(C) the impact of such orders on the ability of insured depository institutions to raise capital;

(D) the impact of such orders on the ability of insured depository institutions to extend or modify credit to existing and new borrowers; and

(E) whether individual insured depository institutions have improved enough to have such orders removed.

(7) FDIC POLICY.—The application and impact of FDIC policies, including—

(A) the impact of FDIC policies on the investment in insured depository institutions, especially in States where more than 10 such institutions have failed since 2008;

(B) whether the FDIC fairly and consistently applies capital standards when an insured depository institution is successful in raising private capital; and

(C) whether the FDIC steers potential investors away from insured depository institutions that may be in danger of being placed in receivership or conservatorship.

(8) PRIVATE EQUITY COMPANIES.—The FDIC’s handling of potential investment from private equity companies in insured depository institutions, including—

(A) the number of insured depository institutions that have been approved to receive private equity investment by the FDIC;

(B) the number of insured depository institutions that have been rejected from receiving private equity investment by the FDIC; and

(C) the reasons for rejection of private equity investment when such rejection occurs.

(d) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspector General shall submit to Congress a report—

(1) on the results of the study conducted pursuant to this section; and

(2) any recommendations based on such study.

Consultation. (e) COORDINATION BETWEEN FDIC IG, TREASURY IG, AND FEDERAL RESERVE IG.—In carrying out this section, the Inspector General of the FDIC shall consult with the Inspectors General of the Treasury and of the Federal Reserve System, and such Inspectors General shall provide any documents or other material requested by the Inspector General of the FDIC in order to carry out this section.

SEC. 2. CONGRESSIONAL TESTIMONY.

Deadline. The Inspector General of the Federal Deposit Insurance Corporation and the Comptroller General of the United States shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 150 days after the date of publication of the study required under this Act to discuss the outcomes and impact of Federal regulations on bank examinations and failures.

SEC. 3. GAO STUDY.

(a) STUDY.—The Comptroller General of the United States shall carry out a study on the following:

(1) The causes of high levels of bank failures in States with 10 or more failures since 2008.

(2) The procyclical impact of fair value accounting standards.

(3) The causes and potential solutions for the “vicious cycle” of loan write downs, raising capital, and failures.

(4) An analysis of the community impact of bank failures.

(5) The feasibility and overall impact of loss share agreements.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Congress on the study carried out pursuant to subsection (a).

Approved January 3, 2012.

LEGISLATIVE HISTORY—H.R. 2056:

HOUSE REPORTS: No. 112–182 (Comm. on Financial Services).

CONGRESSIONAL RECORD, Vol. 157 (2011):

July 26, 28, considered and passed House.

Nov. 17, considered and passed Senate, amended.

Dec. 19, 20, House considered and concurred in Senate amendments.