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## United States Senate

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WASHINGTON, DC 20510-6075

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May 4, 2011

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Securities and Exchange Commission  
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The Honorable Jon T. Rymer  
Inspector General  
Federal Deposit Insurance Corporation  
3501 N. Fairfax Drive  
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Dear Inspectors General:

We write to ask each of you to initiate a review of the economic analysis performed by the regulatory agency under your supervision. Our request arises from our concern that regulatory agencies are conducting rulemakings to implement Dodd-Frank without adequately considering the costs and benefits of their rules and the effects those rules could have on the economy.

On February 15, 2011, we sent a letter to that effect to each regulatory agency.<sup>1</sup> We were troubled by the concerns raised by Commissioners at both the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) about economic analysis at their agencies. We noted that the rules adopted under the Dodd-Frank Act will have a long-term effect on job creation and economic growth, and will affect how consumers and businesses obtain credit, allocate capital, and manage risk.

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<sup>1</sup> <http://crapo.senate.gov/documents/Dodd-FrankLetterFeb-11.pdf>

On April 15, 2011, the Office of the Inspector General for the CFTC issued an investigative report entitled "An Investigation Regarding the Cost-Benefit Analyses Performed by the Commodity Futures Trading Commission in Connection with Rulemakings Undertaken Pursuant to the Dodd-Frank Act."<sup>2</sup> Unfortunately, the report found a number of troubling issues with CFTC rulemaking that confirm the concerns expressed in our February 15, 2011 letter. Here are just a few examples:

- The report found that legal formalities trumped economic analysis in the rulemaking process. This was exemplified by the fact that the Office of General Counsel took a dominant role over the Office of Chief Economist in drafting cost-benefit analyses. The CFTC Inspector General described this situation as "odd" for an agency that regularly engages in economic analysis. (Page iv.)
- The report found that CFTC staff considered economic analysis to be merely an administrative task, rather than a substantive part of rulemaking. The CFTC Inspector General discovered that team members commonly referred to the economic analysis as the regulation's "caboose." (Page 15.)
- The report found that the CFTC's rulemaking process does not comply with the President's Executive Order 'Improving Regulation and Regulatory Review.' For example, the CFTC Inspector General concluded that "nobody quantified internal costs associated with rulemaking." (Page 15.)
- The report found that CFTC staff expressed "frustration" and "confusion" about the difference between cost-benefit analysis and the required Paperwork Reduction Act statement. The CFTC Inspector General described the level of staff confusion as "troublesome." (Page 21.)

We are concerned that these rulemaking issues documented by the CFTC Inspector General's Report are not unique to the CFTC and are impeding the agencies' ability to understand the economic effects of their proposed rules. Therefore, we request that you conduct a review of the economic analyses performed by the regulatory agency under your supervision and prepare a written report of your findings.

Please include in your report 1) a description of any statutory or other requirements to perform economic analysis, 2) a description of any internal policies, procedures, and guidance that the agency uses to ensure rigor and consistency in the economic analysis of its proposed rules, 3) an assessment of the degree to which the relevant staff of the agency understand and follow statutory and the agency's own requirements, 4) an assessment of the degree to which the agency complies with these requirements, 5) a description of any discretionary economic analysis that the agency voluntarily

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<sup>2</sup> [http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig\\_investigationreport.pdf](http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig_investigationreport.pdf). The Office of the Inspector General for the Commodity Futures Trading Commission undertook the investigation at the request of Representative Frank D. Lucas, Chairman, House Committee on Agriculture, and Representative K. Michael Conaway, Chairman, Subcommittee on General Farm Commodities and Risk. [http://agriculture.house.gov/pdf/letters/cftc\\_inspectorgeneral110311.pdf](http://agriculture.house.gov/pdf/letters/cftc_inspectorgeneral110311.pdf)

undertakes on a regular or *ad hoc* basis in order to ensure that its rulemaking is effective and efficient, 6) an assessment of the relevant qualifications of the staff who conduct economic analysis, and 7) a review of the economic analysis, if any, conducted in connection with the agency's rulemakings, with particular emphasis on:

- A. The quantitative methodologies the agency uses to evaluate the costs and benefits of proposed rules and the effects those rules could have on job creation and economic growth.
- B. The qualitative methods the agency uses to categorize or rank the effects of proposed rules.
- C. The extent to which the agency considers alternative approaches to its proposed rules.
- D. The extent to which the agency examines the costs, benefits, and economic impact of reasonable alternatives to its proposed rules.
- E. The extent to which the agency seeks public input and expertise in evaluating the costs, benefits, and economic impact of its proposed rules, and the extent to which the agency incorporates the public input into its rule proposals.
- F. The extent to which the economic analysis performed by the agency with respect to its proposed rulemakings is transparent and the results are reproducible.

In light of the unprecedented number of rule proposals that have been issued since the enactment of Dodd-Frank, we recommend that you limit your review of the agency's use of economic analysis in rulemakings to your agency's proposed rules listed in Attachment A. Based on your review, please make recommendations on how to improve the rigor and consistency of the agency's economic analysis. Please also describe any additional steps that the agency would have to take if it were subject to Executive Orders 13563 and 12866 and associated Office of Management and Budget (OMB) guidance.<sup>3</sup>

Finally, we ask that you assess the extent to which your agency is considering the cumulative burden of all Dodd-Frank rulemakings on market participants and the economy.

Thank you for your consideration of this request. We respectfully ask that you respond by June 13, 2011.

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<sup>3</sup> Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 12866, Regulatory Planning and Review (October 4, 1993), and OMB Circular A-4, Regulatory Analysis (September 17, 2003) [http://www.whitehouse.gov/omb/inforeg\\_regmatters](http://www.whitehouse.gov/omb/inforeg_regmatters)

Sincerely,

Richard Shelby

Mike Crapo

Lyndie Wick

Pat Romney

Jerry Moran

Joni DeMint

Mike Johanns

Clare Kin

Bowen

Dail V

**Attachment A**  
**List of Rules for Review**

**Commodity Futures Trading Commission**

1. Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, April 27, 2011, 76 FR \_\_\_\_ (2011)
2. Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 16588 (Mar. 24, 2011)
3. Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011)
4. Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (Jan. 7, 2011)

**Federal Deposit Insurance Corporation**

1. Credit Risk Retention, 76 FR 24090 (April 29, 2011)
2. Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor, 75 FR 82317 (Dec. 30, 2010)
3. Margin and Capital Requirements for Covered Swap Entities, April 12, 2011, 76 FR \_\_\_\_ (2011)

**Federal Reserve Board**

1. Credit Risk Retention, 76 FR 24090 (April 29, 2011)
2. Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor, 75 FR 82317 (Dec. 30, 2010)
3. Margin and Capital Requirements for Covered Swap Entities, April 12, 2011, 76 FR \_\_\_\_ (2011)
4. Regulation Z; Truth in Lending (April 19, 2011). 76 FR \_\_\_\_ (2011)
5. Financial Market Utilities, 76 FR 18445 (April 4, 2011)

**Office of the Comptroller of the Currency**

1. Credit Risk Retention, 76 FR 24090 (April 29, 2011)
2. Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor, 75 FR 82317 (Dec. 30, 2010)
3. Margin and Capital Requirements for Covered Swap Entities, April 12, 2011, 76 FR \_\_\_\_ (2011)

**Securities and Exchange Commission**

1. Credit Risk Retention, 76 FR 24090 (April 29, 2011)
2. Clearing Agency Standards for Operation and Governance, 76 FR 14472 (March 16, 2011)
3. Registration and Regulation of Security-Based Swap Execution Facilities, 76 FR 10948 (Feb. 28, 2011)
4. Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 FR 8068 (Feb. 11, 2011)
5. Registration of Municipal Advisors, 76 FR 824 (Jan. 6, 2011)
6. Conflict Minerals, 75 FR 80948 (Dec. 23, 2010)