



441 G St. N.W.
Washington, DC 20548

B-335598

September 28, 2023

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury: Coronavirus State and Local Fiscal Recovery Funds*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury (Treasury) entitled "Coronavirus State and Local Fiscal Recovery Funds" (RIN: 1505-AC81). We received the rule on September 20, 2023. It was published in the *Federal Register* as an interim final rule on September 20, 2023. 88 Fed. Reg. 64986. The stated effective date is September 20, 2023.

Treasury states that the interim final rule implements the amendments made by the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (Dec. 29, 2022), with respect to the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021).

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). In this instance, Treasury stated that a 60-day delay would be impracticable and contrary to the public interest because the interim final rule concerns funding for emergency-relief purposes.

Enclosed is our assessment of Treasury's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the printed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen
Senior Legal Advisor for Regulatory Affairs
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY
ENTITLED
“CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS”
(RIN: 1501-AC81)

(i) Cost-benefit analysis

The Department of the Treasury (Treasury) conducted an analysis of the benefits and costs of the interim final rule. With respect to benefits, Treasury stated that relative to a pre-Consolidated Appropriations Act, 2023, baseline, no additional resources are provided to state, local, and tribal governments under the State and Local Fiscal Recovery Fund (SLFRF) and the Coronavirus Local Fiscal Recovery Fund program. However, Treasury stated that those governments will now have additional flexibility in using SLFRF funds. With respect to costs, Treasury stated that the interim final rule will not generate significant administrative costs relative to a pre-Consolidated Appropriations Act, 2023, baseline, and that total costs required for state, local, and tribal governments to administer SLFRF funds will not change significantly.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

Treasury stated that because this interim final rule is exempt from the notice and comment requirements of the Administrative Procedure Act (APA), Treasury is not required to conduct a regulatory flexibility analysis under the Act.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

The interim final rule did not discuss the Act. In its submission to us, Treasury indicated that the Act was “not applicable” to the interim final rule.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that

directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

Treasury did not discuss the Administrative Pay-As-You-Go Act of 2023 in the interim final rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

Treasury stated that the Act's requirements for advance notice and public comment do not apply to matters relating to agency grants, such as the interim final rule which pertains to eligible uses of SLFRF program grants. Alternatively, Treasury states that good cause exists to waive the Act's notice and comment requirements because the interim final rule concerns funding for emergency-relief purposes. Nevertheless, the interim final rule solicited public comments for submission by November 20, 2023.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

Treasury stated that the interim final rule contains information collection requirements under the Act that have been reviewed and approved by OMB and assigned OMB Control Number 1505-0271. Treasury provided a total burden estimate of 284,209 hours and \$13,869,339, which it stated has been previously approved by OMB.

Statutory authorization for the rule

Treasury promulgated the interim final rule pursuant to sections 4701, 4703a, and 5701–5710 of title 12, section 321 of title 31, and sections 802 and 803 of title 42, United States Code, as well as the Consolidated Appropriations Act, 2023, Public Law 117-328.

Executive Order No. 12866 (Regulatory Planning and Review)

Treasury stated that the interim final rule is a significant regulatory action within the meaning of the Order, as amended, and that it has submitted the interim final rule to OMB for review.

Executive Order No. 13132 (Federalism)

Treasury stated that the interim final rule does not have federalism implications within the meaning of the Order and does not impose substantial, direct compliance costs on state, local, and tribal governments or preempt state law within the meaning of the Order.