



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

B-332178

May 20, 2020

The Honorable Mike Crapo  
Chairman  
The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

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

Subject: *Securities and Exchange Commission: Temporary Amendments to Regulation  
Crowdfunding*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission) entitled “Temporary Amendments to Regulation Crowdfunding” (Release No. 33–10781). We received the rule on May 5, 2020. It was published in the *Federal Register* as a temporary final rule on May 7, 2020. 85 Fed. Reg. 27116. The amendments are effective from May 4, 2020, through March 1, 2021.

According to the Commission, the final rule facilitates capital formation for small businesses impacted by coronavirus disease 2019 (COVID-19). The Commission stated the temporary final rule is intended to expedite the offering process for smaller, previously established companies directly or indirectly affected by COVID-19 that are seeking to meet their funding needs through the offer and sale of securities pursuant to Regulation Crowdfunding. According to the Commission, the temporary final rules are designed to facilitate this offering process by providing tailored, conditional relief from certain requirements of Regulation Crowdfunding relating to the timing of the offering and the availability of financial statements required to be included in issuers’ offering materials while retaining appropriate investor protections.

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). The Commission determined it had good cause because small businesses affected by the closures and safety measures designed to slow the spread of COVID-19 may face urgent funding needs that could be addressed by use of the internet to reach potential investors. In the current circumstances, the Commission determined

a delay in implementation would substantially undermine the relief intended by the temporary rules and could exacerbate the existing challenges faced by many small businesses in urgent need of capital to continue their operations.

Enclosed is our assessment of the Commission'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 black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
“TEMPORARY AMENDMENTS TO REGULATION CROWDFUNDING”  
(RELEASE NO. 33-10781)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) stated the temporary final rule would allow eligible issuers greater flexibility to access capital under Regulation Crowdfunding on an expedited basis. According to the Commission, this would facilitate capital formation for eligible users. The Commission also estimated that relief from certain timing and information requirements would reduce barriers and increase efficiency for eligible issuers. The Commission further estimated that the temporary final rule would increase competition between small and large businesses and facilitate capital formation for smaller companies in need of financing due to the coronavirus disease 2019. The Commission stated it expects the aggregate economic effects of the temporary rule to be modest relative to the economic effects of the 2015 Regulation Crowdfunding rules.

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

The Commission determined the temporary final rule does not require 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

As an independent regulatory agency, the Commission is not subject to the Act.

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

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

The Commission waived notice and comment procedures for good cause. The Commission determined it had good cause because small businesses affected by the closures and safety measures designed to slow the spread of COVID-19 may face urgent funding needs that could be addressed by use of the internet to reach potential investors. In the current circumstances, the Commission determined a delay in implementation would substantially undermine the relief intended by the temporary rules and could exacerbate the existing challenges faced by many small businesses in urgent need of capital to continue their operations.

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

The Commission determined the temporary final rule may impact an information collection requirement (ICR) for purposes of the Act. The impacted ICR is Form C, associated with Office of Management and Budget Control Number 3235-0307. The Commission estimated the

temporary final rule would lead to a reduction in the compliance burden for Form C but that there would possibly be an increase in the number of issuers relying on Regulation Crowdfunding and required to complete Form C. For this reason, the Commission is not changing its burden or cost estimates for this ICR.

Statutory authorization for the rule

The Commission promulgated the temporary final rule pursuant to sections 77c, 77d, 77d-1, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o, 78o-7 note, 78q, 78u-5, 78w, 78ll, 78mm, 80a-2, 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37 of title 15, United States Code, and sections 107 and 301-305 of Public Law 112-106.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.