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Washington, DC 20548

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May 28, 2021

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

The Honorable Maxine Waters  
Chairwoman  
The Honorable Patrick McHenry  
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-AC77). We received the rule on May 15, 2021. It was published in the *Federal Register* as an interim final rule (IFR) on May 17, 2021. 86 Fed. Reg. 26786. The effective date is May 17, 2021.

According to Treasury, it is issuing this IFR to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act of 2021 (ARPA). Pub. L. No. 117-2, § 9901, 135 Stat 4, 223 (Mar. 11, 2021), 42 U.S.C. 802 *et seq.* Treasury stated that section 9901 of ARPA amended title VI of the Social Security Act to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds). *See generally* 42 U.S.C. 801 *et seq.* Treasury also stated that the Fiscal Recovery Funds are intended to provide support to state, local, and tribal governments (together, recipients) in responding to the impact of coronavirus disease 2019 (COVID-19) and in their efforts to contain COVID-19 on their communities, residents, and businesses. Treasury stated further that the Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund.

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. §§ 553(b)(3)(B), 808(2). Here, Treasury stated that notice and comment procedures are unnecessary for this IFR and the agency found good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act.

Treasury notes that the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” 5 U.S.C. § 553(a)(2). According to Treasury this IFR implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. Thus, for the same reason, Treasury stated that there is good cause justification that supports waiver of the 60-day delayed effective date under CRA.

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 black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

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: 1505-AC77)

(i) Cost-benefit analysis

The Department of the Treasury (Treasury) analyzed the benefits and costs of this interim final rule (IFR). According to Treasury this IFR is primarily a transfer rule because it implements the transfer of \$350 billion in aid from the federal government to states, territories, tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury believes that this transfer will generate substantial additional economic activity including the channeling of funds to projects that would benefit public health and infrastructure. Treasury asserts that absent such fiscal relief, fiscal austerity among state, local, and tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession. Treasury stated that this regulatory action will generate administrative costs relative to the pre-statutory baseline. Treasury also stated that it expects that the administrative burden associated with this program will be moderate for a grant program of its size. Notwithstanding, Treasury stated further that it lacks data to estimate the precise extent to which this IFR generates administrative burden for state, local, and tribal governments, but Treasury is seeking comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

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

Treasury notes that because this IFR is exempt from the notice and comment requirements of the Administrative Procedure Act, it is not required to conduct a regulatory flexibility analysis.

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

In its submission to us, Treasury indicated that it did not conduct an Unfunded Mandates Reform Act analysis.

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

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

Treasury stated that notice and comment procedures are unnecessary for this IFR and the agency found good cause to waive such procedures under sections 553(b)(3)(B) of the Administrative Procedure Act. Here, Treasury notes that the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” 5 U.S.C. § 553(a)(2). According to Treasury, this IFR implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses.

Treasury stated that it would also have good cause to waive notice and comment and delayed effective date requirements under section 553 due to the urgency of the public health emergency and demonstrated intention of Congress that provisions of the American Rescue Plan Act, Pub. L. 117-2, 135 Stat 4, 223 (Mar. 11, 2021), be implemented expeditiously, as well as the practical need for states to undertake necessary planning.

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

Treasury determined that there are information collections associated with state, territory, local, and tribal government application materials necessary to receive Fiscal Recovery Funds. Treasury stated that the information collections associated with this IFR have been reviewed and approved by the Office of Management and Budget (OMB) pursuant PRA's emergency processing procedures and assigned OMB Control Number 1505-0271. Treasury also stated that the information collections related to ongoing reporting requirements, as discussed in this IFR, will be submitted to OMB for emergency processing in the near future. Treasury estimated the total burden hours to be from 851,850 to 1,151,850 hours and the total cost to be \$41,570,280 to \$56,210,280.

Statutory authorization for the rule

Treasury promulgated this IFR pursuant to sections 4701–4719 of title 12; section 321 of title 31; and sections 802–805 of title 41, United States Code; and the Consolidated Appropriations Act, 2021, Public Law 116-260, § 520–525, 134 Stat. 1182, 2079–2090 (Dec. 27, 2020).

Executive Order No. 12866 (Regulatory Planning and Review)

Treasury determined that this IFR is economically significant under the Order. Treasury noted, however, that it is proceeding under the emergency provision of the Order under section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the coronavirus disease 2019 (COVID-19) public health emergency. Treasury stated that this IFR has been reviewed by OMB in accordance with the Order. Treasury stated further that this IFR is necessary to implement the American Rescue Plan Act in order to provide economic relief to state, local, and tribal governments adversely impacted by the COVID-19 public health emergency. *See generally* American Rescue Plan Act of 2021, Pub. L. 117-2, § 9901, 135 Stat 4, 223 (Mar. 11, 2021), 42 U.S.C. 802 *et seq.*

Executive Order No. 13132 (Federalism)

Treasury stated that this IFR 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.