

with their mortgage transaction and disclose them on the Loan Estimate.¹³ For purposes of determining good faith under the TRID Rule, creditors may use revised estimates of such costs in a limited number of situations pursuant to Regulation Z, § 1026.19(e)(3)(iv).¹⁴ One such situation is if there are “changed circumstances” that affect the settlement charges consumers would incur.¹⁵ The TRID Rule specifies that changed circumstances includes “an extraordinary event beyond the control of any interested party,” with the commentary to the TRID Rule clarifying that a “war or natural disaster” is an example of such an extraordinary event.¹⁶

Economic disruptions and shortages during the COVID-19 pandemic may affect the ability of stakeholders to provide accurate estimates of some settlement charges. Stakeholders have sought guidance from the Bureau as to whether the COVID-19 pandemic is an extraordinary event that permits creditors to provide consumers with revised estimates reflecting changes in settlement charges. For example, a stakeholder asked to clarify whether, for purposes of establishing good faith, a creditor could provide a revised estimate of the appraisal fee based on changed circumstances where (1) the amount disclosed on the Loan Estimate was based on a reasonable market price at the time of the estimate and (2) the actual appraisal fee was higher because of a shortage of available appraisers due to the effects of the COVID-19 pandemic. Upon consideration of the interpretive issues, the Bureau concludes that, as with wars or natural disasters, the COVID-19 pandemic is an example of an extraordinary event beyond the control of any interested

party, and thus is a changed circumstance. Accordingly, for purposes of determining good faith, creditors may use revised estimates of settlement charges that consumers would incur in connection with the mortgage transaction if the COVID-19 pandemic has affected the estimate of such settlement charges.¹⁷

3. Legal Authority and TILA Safe Harbor Provisions

The Bureau is issuing this interpretive rule based on its authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.¹⁸

By operation of TILA section 130(f), no provision of TILA sections 108(b), 108(c), 108(e), 112, or 130 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, this interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.¹⁹

II. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.²⁰ Therefore, this rule is effective on May 4, 2020, the same date that it is published in the **Federal Register**.

III. Regulatory Requirements

This rule articulates the Bureau’s interpretation of Regulation Z and TILA. As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.²¹ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an

initial or final regulatory flexibility analysis.²²

The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.²³

IV. Congressional Review Act

Pursuant to the Congressional Review Act,²⁴ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

V. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: April 29, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA-2020-0022]

RIN 3245-AH38

Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Disbursements

AGENCY: U. S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule (the First PPP Interim Final Rule) announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). The Act

¹³ 12 CFR 1026.19(e)(3). As a general rule, an estimated closing cost disclosed on the Loan Estimate pursuant to § 1026.19(e)(1)(i) is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed. 12 CFR 1026.19(e)(3)(i). For certain categories of settlement charges, good faith is determined with reference to whether: (1) The aggregate amount of certain charges paid by or imposed on the consumer does not exceed the aggregate amount of those charges disclosed pursuant to § 1026.19(e)(1)(i) by more than 10 percent (*see* 12 CFR 1026.19(e)(3)(ii)(A)); or (2) the charge was estimated consistent with the best information reasonably available at the time it was disclosed, regardless of whether the final amount exceeds the estimated amount (*see* 12 CFR 1026.19(e)(3)(iii)).

¹⁴ 12 CFR 1026.19(e)(3)(iv); 12 CFR 1026.19(e)(4)(i). Under § 1026.19(e)(4)(i), the revised estimates must be reflected on a revised version of the Loan Estimate, on the Closing Disclosure, or on a corrected Closing Disclosure.

¹⁵ 12 CFR 1026.19(e)(3)(iv)(A).

¹⁶ 12 CFR 1026.19(e)(3)(iv)(A)(1); comment 19(e)(3)(iv)(A)-2.

¹⁷ *See id.*; 12 CFR 1026.19(e)(4)(i). As noted above, the revised estimates must be reflected on a revised version of the Loan Estimate, on the Closing Disclosure, or on a corrected Closing Disclosure. 12 CFR 1026.19(e)(4)(i). *See also* 12 CFR 1024.2(b) (definition of “Changed circumstances” in Regulation X, which predates the TRID Rule changed circumstance definition, includes “Acts of God, war, disaster, or other emergency”).

¹⁸ 12 U.S.C. 5512(b)(1). The relevant provisions of TILA and Regulation Z form part of Federal consumer financial law. *See* 12 U.S.C. 5481(12)(O), (14).

¹⁹ 15 U.S.C. 1640(f).

²⁰ 5 U.S.C. 553(d).

²¹ 5 U.S.C. 553(b).

²² 5 U.S.C. 603(a), 604(a).

²³ 44 U.S.C. 3501 *et seq.*

²⁴ 5 U.S.C. 801 *et seq.*

temporarily adds a new program, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. The Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, and April 24, 2020. This interim final rule supplements the previously posted interim final rules with additional guidance. This interim final rule supplements SBA’s implementation of the Act and requests public comment.

DATES:

Effective date: This rule is effective May 4, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment date: Comments must be received on or before June 3, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0022, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public

health measures that are being taken to minimize the public’s exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program.” Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the Paycheck Protection Program.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America’s small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders’ and borrowers’ need for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020.

This interim final rule supplements previous regulations and guidance on several important, discrete issues. The immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. This interim final rule is effective without advance notice and public comment because

section 1114 of the Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before June 3, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program Requirements for Disbursements

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans and any accrued interest may qualify for loan forgiveness. Additional information about the PPP is available in the First PPP Interim Final Rule (85 FR 20811), a second interim final rule (85 FR 20817) (the Second PPP Interim Final Rule), a third interim final rule (85 FR 21747) (the Third PPP Interim Final Rule), a fourth interim final rule (85 FR 23450) (the Fourth PPP Interim Final Rule), and in an interim final rule issued by the Department of the Treasury, which was posted for public inspection at the **Federal Register** on April 28, 2020 (FR Doc. 2020–09239) (collectively, the PPP Interim Final Rules).

1. Disbursements

a. Can a borrower take multiple draws from a PPP loan and thereby delay the start of the eight-week covered period?

No. The lender must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval; for the purposes of this rule, a loan is considered approved when the loan is assigned a loan number by SBA.¹ For loans that received an SBA loan number prior to the posting of this interim final rule but have not yet been fully disbursed, the following transition rules apply:

¹ If the tenth calendar day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day.

- The ten calendar-day period described above begins on April 28, 2020.

- The eight-week covered period began on the date of first disbursement.

Notwithstanding this limitation, lenders are not responsible for delays in disbursement attributable to a borrower's failure to timely provide required loan documentation, including a signed promissory note. Loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within 20 calendar days of loan approval shall be cancelled by the lender, subject to the transition rules above. When disbursing loans, lenders must send any amount of loan proceeds designated for the refinancing of an EIDL loan directly to SBA and not to the borrower.

The Administrator, in consultation with the Secretary, determined that requiring a single loan disbursement will best serve the interests of both borrowers and lenders and promote the purposes of the CARES Act. A single loan disbursement will eliminate the risk of delays in processing loan disbursement installments, advance the goal of payroll continuity for employees, and provide borrowers with faster access to the full loan amount so that they can immediately cover payroll costs.

b. By when must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?

SBA will make available a specific SBA Form 1502 reporting process through which PPP lenders will report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled. Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 18, 2020. The lender must report on SBA Form 1502 whether it has fully disbursed PPP loan proceeds. A lender will not receive a processing fee: (1) Prior to full disbursement of the PPP loan; (2) if the PPP loan is cancelled before disbursement; or (3) if the PPP loan is cancelled or voluntarily terminated and repaid after disbursement (including if a borrower repays the PPP loan proceeds to conform to the borrower's certification regarding the necessity of the PPP loan request). In addition to providing ACH credit information to direct payment of the requested processing fee, lenders will be required to confirm that all PPP loans for which the lender is requesting a processing fee

have been fully disbursed on the disbursement dates and in the loan amounts reported. A lender must report through either Etran Servicing or the SBA Form 1502 report any PPP loans that have been cancelled before disbursement or that have been cancelled or voluntarily terminated and repaid after disbursement.

The Administrator, in consultation with the Secretary, determined that requiring lenders to report on disbursement within 20 calendar days of loan approval ensures that disbursement of funds to eligible borrowers will occur more rapidly. This requirement also will enhance SBA's ability to track program data.

2. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at www.sba.gov. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are "small entities." Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, "along with a statement providing the factual basis for such certification." If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a

regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,
Administrator.

[FR Doc. 2020-09398 Filed 5-1-20; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA-2020-0023]

RIN 3245-AH39

Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders

AGENCY: U. S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds a new program, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. The CARES Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, and April 28, 2020, and the Department of the Treasury posted an additional interim final rule on April 28, 2020. This interim final rule supplements the previously posted interim final rules by limiting the amount of PPP loans that any single corporate group may receive and provides additional guidance on the criteria for non-bank lender participation in the PPP, and requests public comment.

DATES:

Effective date: This rule is effective May 4, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program

through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment date: Comments must be received on or before June 3, 2020.

ADDRESSES: You may submit comments, identified by number SBA-2020-0023 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833-572-0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public’s exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify

existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program.” Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139), which provided additional funding and authority for the Paycheck Protection Program.

As described below, to preserve the limited resources available to the PPP program, this interim final rule limits the aggregate amount of PPP loans that any single corporate group may receive. This interim final rule also provides additional guidance regarding lenders eligible to make PPP loans.

II. Comments and Immediate Effective Date

The intent of the CARES Act is that SBA provide relief to America’s small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders’ and borrowers’ need for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020.

This interim final rule supplements previous regulations and guidance on certain important, discrete issues. The immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the CARES Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of this interim final rule, including section III below. These comments must be submitted on or before June 3, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.