the applicant’s or co-applicant’s ethnicity, race, sex, and age as “not applicable” if the applicant or co-
applicant is not a natural person. For these reasons, the Bureau will not count first-lien originations reported in HMDA
data for which both the applicant’s and co-applicant’s ethnicity, race, sex, and age all are reported as follows: (1) The applicant’s ethnicity is reported as “Not applicable” (HMDA Code 4); (2) the applicant’s race is reported as “Not applicable” (HMDA Code 7); (3) the applicant’s sex is reported as “Not applicable” (HMDA Code 4); (4) the applicant’s age is reported as “Not applicable” (HMDA Code 8); (5) the co-applicant’s ethnicity is reported as “Not applicable” (HMDA Code 4) or “No co-applicant” (HMDA Code 5); (6) the co-applicant’s race is reported as “Not applicable” (HMDA Code 7) or “No co-applicant” (HMDA Code 8); (7) the co-applicant’s sex is reported as “Not applicable” (HMDA Code 4) or “No co-applicant” (HMDA Code 5); and (8) the co-applicant’s age is reported as “Not applicable” (HMDA Code 8888) or “No co-applicant” (HMDA Code 9999).

The underserved counties list, using the HMDA data described above, can be found on the Bureau’s public website at https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/rural-and-underserved-counties-list/, where, consistent with past practice, the list is made available along with historical lists.

C. Legal Authority

The Bureau is issuing this interpretive rule based on its authority to interpret 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 Federal consumer financial laws. 5

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 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this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. 6

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. 7
Therefore, this rule is effective on June 26, 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. 8 Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 9

The Bureau has determined that this interpretive rule does not impose any new requirements or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act. 10

IV. Congressional Review Act

Pursuant to the Congressional Review Act, 11 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.


Laura Galban,
Federal Register Liaison, Bureau of Consumer Financial Protection.

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BILLING CODE 4610–AM–P

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7 5 U.S.C. 553(d).
8 5 U.S.C. 553(b).
9 5 U.S.C. 603(a), 604(a).
10 44 U.S.C. 3501 et seq.
11 5 U.S.C. 801 et seq.
the PPP relating to the maturity of PPP
Act of 2020 (Flexibility Act) (Pub. L.
Paycheck Protection Program Flexibility
June 5, 2020, the President signed the
funding and authority for the PPP. On
L. 116–139), which provided additional
and Health Care Enhancement Act (Pub.
Economic Security Act (the CARES Act
emergency, many small businesses
nationwide are experiencing economic
hardship as a direct result of the
Federal, State, 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, have been
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, have been 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 1302 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 PPP. On
June 5, 2020, the President signed the
Paycheck Protection Program Flexibility
Act of 2020 (Flexibility Act) (Pub. L.
116–142), which changed provisions of
the PPP relating to the maturity of PPP
loans, the deferral of PPP loan
payments, and the forgiveness of PPP
loans.

II. Comments and Immediate Effective
Date
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
Act without regard to notice
requirements. In addition, SBA has
determined that there is good cause for
dispensing with advance public notice
and comment on the grounds that it
would be contrary to the public
interest. Specifically, advance public
notice and comment would defeat the
purpose of this interim final rule given
that SBA’s authority to guarantee PPP
loans expires on June 30, 2020. These
same reasons provide good cause for
SBA to dispense with the 30-day
delayed effective date provided in the
Administrative Procedure Act (APA).
Although this interim final rule is
effective on or before date of filing,
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 July 27, 2020.
The SBA will consider these comments,

1. Changes to the First Interim Final
Rule
Eligibility Requirements
The First Interim Final Rule provided,
among other things, that a PPP loan will
not be approved if an owner of 20
percent or more of the equity of the
applicant has been convicted of a felony
within the last five years. On June 12,
2020, the First Interim Final Rule was
amended after the Administrator, in
consultation with the Secretary of the
Treasury (the Secretary), determined
that a shorter timeframe for felonies that
do not involve fraud, bribery,
embezzlement, or a false statement in a
loan application or an application for
federal financial assistance is more
consistent with Congressional intent to
provide relief to small businesses and
also promotes the important policies
underlying the First Step Act of 2018

Upon further consideration, and in
consultation with the Secretary, the
Administrator has determined that two
additional modifications to the First
Interim Final Rule are appropriate to
ensure a consistent approach to
applicants with criminal histories. First,
the First Interim Final Rule provided
that an applicant is ineligible for a PPP
loan if an owner of 20 percent or more
of the equity of the applicant is
presently subject to an indictment,
criminal information, arraignment, or
other means by which formal criminal
charges are brought in any jurisdiction.
The Administrator has determined that
this restriction should be limited to
pending criminal charges for felony
offenses, which aligns with the
Administrator’s prior determination that
only felony convictions (but not
convictions for other types of offenses)
will limit an applicant’s eligibility for
the PPP, subject to the time periods
specified above. Second, the First
Interim Final Rule provided that an
applicant was ineligible for a PPP loan
if an owner of 20 percent or more of the
equity of the applicant is on probation

or on parole. The Administrator has determined that this restriction should be limited to individuals whose probation or parole commenced within the time periods specified above—i.e., within the last five years for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, and within the last one year for other felonies. Applying these time limitations to the probation and parole restriction aligns with the Administrator’s prior determination to apply the identical time limitations to felony convictions. Moreover, aligning the time limitations applicable to these restrictions is consistent with Congressional intent to provide relief to small businesses and also promotes the important policies underlying the First Step Act of 2018 (Pub. L. 115–391). This amendment does not affect the rule regarding applicants that are presently suspended, debarred, or proposed for debarment, which remains effective. Therefore, Part III.2.b.iii. of the First Interim Final Rule (85 FR 20811, 20812) is revised to read as follows:

b. Could I be ineligible even if I meet the eligibility requirements in (a) above? You are ineligible for a PPP loan if, for example:

iii. An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year; or

Under the First Interim Final Rule, as amended, an applicant is ineligible if an owner of 20 percent or more of its equity is presently incarcerated. In considering this amended Interim Final Rule the Administrator, in consultation with the Secretary, has determined that this restriction on eligibility remains appropriate because the operations of small businesses concern present a greater danger of becoming impaired when their owners are incarcerated. As a result, they may have greater difficulty repaying their loans and present a greater credit risk. Although PPP loans may be forgiven under section 1106 of the CARES Act, PPP loans may only be forgiven in cases where borrowers can document that the proceeds were expended in accordance with the requirements of section 1106. In situations where the proceeds have not been used appropriately, and the loans, accordingly, cannot be forgiven, the borrowers’ ability to repay the loans remains an important consideration. In addition, ineligibility for businesses whose owners are currently incarcerated will help prevent misuse of PPP loan funds, irrespective of loan forgiveness considerations.

Under the First Interim Final Rule, as amended, an applicant is also ineligible if an owner of 20 percent or more of its equity is, for any felony, subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction. Individuals charged with felonies are at risk of imprisonment, which, as discussed above, could place the creditworthiness of their businesses in question. Therefore, the Administrator, in consultation with the Secretary, has determined that this limitation also remains appropriate to ensure that PPP funds are not allocated to an applicant for which a recent felony charge may impair its ongoing business operations and therefore its ability to repay a PPP loan for reasons unrelated to the COVID–19 pandemic.

Finally, under the First Interim Final Rule, as amended, an applicant is ineligible if an owner of 20 percent or more of its equity has been convicted of, plead guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year. The Administrator, in consultation with the Secretary, has determined that, in order to ensure program integrity and safeguard against misuse of PPP funds, it remains appropriate to require that applicants whose owners previously were convicted of or pleaded guilty or nolo contendere to a felony offense have avoided a further felony charge following conviction or incarceration for a period of at least one year before obtaining a PPP loan. This interval provides a reasonable level of assurance that such applicants do not present unacceptable risks of re-incarceration that could, as discussed above, undermine the ability of their businesses to repay their PPP loans. The Administrator, in consultation with the Secretary, has determined that a longer five-year limitation is appropriate for felonies involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance because such felonies are most relevant to the applicant’s business integrity and responsibility, and may indicate a greater risk of potential misuse of PPP loan funds.

Each of the ineligible applicant categories described above has been formulated to reduce the risk of default and fraud in the PPP and to ensure that PPP loan funds are provided for small businesses that will be able to support jobs, consistent with Congressional intent in the CARES Act. These measures are particularly necessary in light of the structure of the PPP, in which lenders are subject to relatively few underwriting obligations before issuing loans that are 100 percent guaranteed by SBA and that may be subject to full forgiveness based on documentation provided by the borrower. While neither lenders nor SBA are conducting typical analysis of the characteristics of PPP applicants, the measures described above are intended to mitigate the risk of default, fraud, or misuse of PPP loan funds intended to benefit small business employees and at the same time balance that need with the need to assist in the rehabilitation of felons, who are working to become responsible and productive members of society.

2. Additional Information

SBA may provide further guidance, if needed, through SBA notices which 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.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act and the Flexibility Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

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 effect but does have a limited retroactive effect consistent with section 3(d) of the Flexibility Act.

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 require modification to the existing PPP information collection that is approved under OMB Control Number 3245–0407 as an emergency request until October 31, 2020. As discussed above, this rule amends the PPP eligibility requirements regarding certain criminal activity. As a result of these amendments, conforming changes will be made to Questions 5 and 6 of Form 2483, Borrower Application Form, and Section H of Form 2484, Lender Application Form. SBA will submit the revisions to these forms to the Office of Management and Budget for approval.

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. Small Business Administration’s 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. 2020–13942 Filed 6–24–20; 4:15 pm]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA–2020–0038]

RIN 3245–AH52

DEPARTMENT OF THE TREASURY

RIN 1505–AC70

Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules

AGENCY: U.S. Small Business Administration; Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the Federal Register on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. Subsequently, SBA and Treasury issued additional interim final rules implementing the Paycheck Protection Program. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) was signed into law, amending the CARES Act. This interim final rule revises interim final rules posted on SBA’s and the Department of the Treasury’s websites on May 22, 2020 (published on June 1, 2020, in the Federal Register), by changing key provisions to conform to the Flexibility Act. Several of these amendments are retroactive to the date of enactment of the CARES Act, as required by section 3(d) of the Flexibility Act.

DATES: Effective Date: This interim final rule is effective March 27, 2020, except for the provision relating to the maturity date of PPP loans, which is effective June 5, 2020, and the provision relating to the cap on the amount of loan forgiveness for owner-employees and self-employed individuals, which is effective on June 24, 2020.

Comment Date: Comments must be received on or before July 27, 2020.