



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

B-332336

July 13, 2020

The Honorable Marco Rubio
Chairman
The Honorable Ben Cardin
Ranking Member
Committee on Small Business & Entrepreneurship
United States Senate

The Honorable Nydia M. Velázquez
Chairwoman
The Honorable Steve Chabot
Ranking Member
Committee on Small Business
House of Representatives

Subject: *Small Business Administration: Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to First Interim Final Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Small Business Administration (SBA) entitled “Business Loan Program Temporary Changes; Paycheck Protection Program— Revisions to First Interim Final Rule” (RIN: 3245-AH49). We received the rule on July 1, 2020. It was published in the *Federal Register* as an interim final rule on June 16, 2020. 85 Fed. Reg. 36308. All provisions of the final rule became effective by June 12, 2020. SBA opened a comment period until July 16, 2020.

According to SBA, the interim final rule revises prior rules on the Paycheck Protection Program (PPP) by changing key provisions, such as the loan maturity, deferral of loan payments, and forgiveness provisions, to conform to the Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020) (Flexibility Act). SBA stated it is also making conforming amendments to the use of PPP loan proceeds for consistency with amendments made in the Flexibility Act. SBA stated some of the amendments are retroactive to March 27, 2020, as required by the Flexibility Act.

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, although SBA did not specifically mention the CRA’s 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Specifically, SBA determined advance public notice and comment would defeat the

purpose of the interim final rule given the program is scheduled to end soon and that many PPP borrowers can now apply for loan forgiveness following the end of their 8-week covered period. According to SBA, providing borrowers and lenders with certainty on both loan requirements and loan forgiveness requirements following the enactment of the Flexibility Act will enhance the ability of the lenders to make loans and process loan forgiveness applications, particularly in light of the fact that most of the Flexibility Act's provisions are retroactive to March 27, 2020.

Enclosed is our assessment of SBA'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: Yvonne Walters
Attorney Advisor
Office of General Counsel
Small Business Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SMALL BUSINESS ADMINISTRATION
ENTITLED
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;
PAYCHECK PROTECTION PROGRAM—
REVISIONS TO FIRST INTERIM FINAL RULE”
(RIN: 3245-AH49)

(i) Cost-benefit analysis

In its submission to us, the Small Business Administration (SBA) indicated that it did not prepare an analysis of the costs and benefits of this interim final rule.

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

SBA determined it did not have to perform a regulatory flexibility analysis because it was not required to follow notice and comment procedures.

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

SBA did not discuss the Act in this interim final rule. In its submission to us, SBA indicated that it considered an analysis under the Act of this interim final rule to be not applicable.

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

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

SBA stated it did not follow notice and comment procedures because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), authorizes SBA to issue regulations for the Paycheck Protection Program (PPP) without regard to notice requirements. SBA also waived advance notice and comment procedures and the 30-day delay in effective date under the Act for good cause. SBA determined it had good cause because advance public notice and comment would defeat the purpose of the interim final rule given the program is scheduled to end soon and that many PPP borrowers can now apply for loan forgiveness following the end of their 8-week covered period. Providing borrowers and lenders with certainty on both loan requirements and loan forgiveness requirements following the enactment of the Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020) (Flexibility Act), will enhance the ability of the lenders to make loans and process loan forgiveness applications, particularly in light of the fact that most of the Flexibility Act’s provisions are retroactive to March 27, 2020.

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

SBA determined the interim final rule modifies existing recordkeeping or reporting requirements under the Act, and SBA stated it will submit the modifications to the Office of Management and

Budget (OMB) for review. These requirements are associated with the PPP Borrower Application Form, the PPP Lender Application Form, and the PPP Loan Forgiveness Application, all approved under OMB control number 3245-0407.

Statutory authorization for the rule

SBA promulgated the interim final rule pursuant to section 636 of title 15, United States Code as well as section 1114 of the CARES Act, Public Law 116-136, and the Flexibility Act, Public Law 116-142.

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

SBA determined the interim final rule is economically significant but is proceeding under the emergency provision of the Order due to the COVID-19 emergency.

Executive Order No. 13,132 (Federalism)

SBA determined the interim final rule does not have federalism implications and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of powers and responsibilities among the various levels of government.