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July 15, 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—Certain Eligible Payroll Costs*

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—Certain Eligible Payroll Costs” (RIN: 3245-AH54). We received the rule on July 2, 2020. It was published in the *Federal Register* as an interim final rule on June 30, 2020, with request for comments on or before July 30, 2020. 85 Fed. Reg. 39066. The stated effective date of the rule is June 26, 2020. *Id.*

The interim final rule supplements the previously posted interim final rules, 85 Fed. Reg. 20811 (April 15, 2020) and 85 Fed. Reg. 21747 (April 20, 2020), by providing additional guidance on certain eligible payroll costs under the Paycheck Protection Program (PPP). Specifically, this interim final rule (1) provides that a fishing boat owner may include compensation reported on Box 5 of Form 1099–MISC and paid to a crewmember described in section 3121(b)(20) of title 26, United States Code (the Internal Revenue Code) as a payroll cost in its PPP loan application, and (2) addresses a fishing boat owner’s eligibility to obtain loan forgiveness of payroll costs paid to a crewmember who has obtained his or her own PPP loan.

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 CRA’s 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures on the grounds that it would be contrary to the public interest and incorporated a brief statement of reasons. Specifically, SBA stated that

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. SBA further stated that these same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (APA). 5 USC 553(d)(3). According to SBA, although this interim final rule is effective on the date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule. SBA stated that these comments must be submitted on or before July 30, 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 cursive script that reads "Shirley A. Jones".

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—
CERTAIN ELIGIBLE PAYROLL COSTS”
(RIN: 3245-AH54)

(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 final rule.

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

SBA stated that it is not required to conduct a regulatory flexibility analysis. According to SBA, rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting 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

SBA did not discuss the Act in the interim final rule. In its submission to us, the agency indicated that it determined that preparation of a written statement under section 202 of the Act is not applicable.

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

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

SBA waived notice and comment procedures. According to SBA, this interim final rule is effective without advance notice and public comment because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), 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, SBA stated that 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. SBA further stated that these same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act, 5 USC 553(d)(3). According to SBA, although this interim final rule is effective on the date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule. SBA stated that these comments must be submitted on or before July 30, 2020.

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

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

Statutory authorization for the rule

SBA promulgated this final rule pursuant to the CARES Act, Pub. L. 116–136; the Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116–139; and the Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116–142.

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

This interim final rule is economically significant for the purposes of the Order according to SBA. However, SBA determined that it would proceed under the emergency provision of the Order, section 6(a)(3)(D), based on its need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency.

Executive Order No. 13,132 (Federalism)

SBA 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. According to SBA, it therefore determined that this rule has no federalism implications warranting preparation of a federalism assessment.