

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

B-333594

October 5, 2021

The Honorable Ben Cardin
Chairman
The Honorable Rand Paul
Ranking Member
Committee on Small Business and Entrepreneurship
United States Senate

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

Subject: *Small Business Administration: Borrower Appeals of Final SBA Loan Review Decisions Under the Paycheck Protection Program*

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 “Borrower Appeals of Final SBA Loan Review Decisions Under the Paycheck Protection Program” (RIN: 3245-AH55). We received the rule on September 22, 2021. It was published in the *Federal Register* as a final rule on September 16, 2021. 86 Fed. Reg. 51589. The effective date is September 14, 2021.

SBA stated that the final rule provides procedures for appeals of certain final SBA loan review decisions under the Paycheck Protection Program (PPP), which is a temporary SBA 7(a) loan program. SBA further stated that the PPP is authorized by, among other things, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), and the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act, Pub. L. No. 116-260, div. N, title III, 134 Stat 1182, 1993 (Dec. 27, 2020).

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. § 808(2). SBA stated it has found that there is good cause to dispense with the 60-day delayed effective date provided in the CRA because delaying the effective date would be contrary to the public interest. According to SBA, the intent of the CARES Act is to afford SBA the flexibility to provide relief to America’s small businesses expeditiously. In addition, SBA stated that, this intent, along with the need to provide lenders and borrowers with certainty regarding PPP loan forgiveness, provides good cause for immediate implementation of changes to the SBA appeal feature of this program.

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 style with a large, looped initial "S".

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
“BORROWER APPEALS OF FINAL SBA LOAN REVIEW DECISIONS
UNDER THE PAYCHECK PROTECTION PROGRAM”
(RIN: 3245-AH55)

(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 determined that since this final rule finalizes an interim final rule that was exempt from notice and comment, SBA 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, SBA indicated that it considered preparation of a written statement under the Act 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.*

On August 27, 2020, SBA published an interim final rule. SBA received 16 comments on the interim final rule. SBA responded to comments in this final rule.

SBA found that there is good cause to dispense with the 30-day delayed effective date provided in the Act. According to SBA, the intent of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), is to afford SBA the flexibility to provide relief to America’s small businesses expeditiously. In addition, SBA stated that, this intent, along with the need to provide lenders and borrowers with certainty regarding Paycheck Protection Program loan forgiveness, provides good cause for immediate implementation of changes to the SBA appeal feature of this program.

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

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under PRA.

Statutory authorization for the rule

SBA promulgated this final rule pursuant to section 504 of title 5, United States Code, various sections of title 15, United States Code, various sections 8127 of title 38, United States Code, and Executive Order 12549.

Executive Order No. 12866 (Regulatory Planning and Review)

SBA stated that the Office of Management and Budget has determined that this final rule is economically significant under the Order. SBA stated it is proceeding under an emergency provision of the Order based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency.

Executive Order No. 13132 (Federalism)

SBA determined that this final 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 determined that the rule has no federalism implications warranting preparation of a federalism assessment.