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B-332140

May 6, 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*

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” (RIN: 3245-AH35). We received the rule on April 22, 2020. It was published in the *Federal Register* as an interim final rule on April 15, 2020. 85 Fed. Reg. 20817. The effective date of the rule is April 15, 2020, but the rule has an applicability date through June 30, 2020, or until funds in the Paycheck Protection Program run out. The agency is holding a comment period through May 15, 2020.

The interim final rule supplements an initial rule SBA issued to implement provisions of the Coronavirus Aid, Relief, and Economic Security Act (the Act). Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). According to SBA, the rule provides additional guidance regarding the application of certain affiliate rules applicable to SBA’s implementation of sections 1102 and 1106 of the Act and requests public comment.

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 and incorporated a brief statement of reasons. Specifically, SBA stated small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because the last day to

apply for and receive a loan is June 30, 2020. According to SBA, the immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a better understanding of loan terms and conditions. SBA also referred to authority under section 1114 of the Act, which, according to SBA, authorizes the agency to issue regulations to implement title I of the Act without regard to notice requirements.

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 initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Nina D. Levine
Deputy 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”
(RIN: 3245-AH35)

(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 the interim final rule.

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

SBA stated the requirements of RFA do not apply if the rule is exempt from notice and comment procedures. Because the rule is exempt from notice and comment procedures according to SBA, SBA determined it is not required to perform 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 the Act was not applicable to the interim final rule.

(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 because, according to SBA, section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorizes the agency to issue regulations to implement title I of the Act without regard to notice requirements. SBA determined it had good cause to waive the delay in effective date because small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the CARES Act as soon as possible because the last day to apply for and receive a loan is June 30, 2020. According to SBA, the immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a full understanding of loan terms and conditions.

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

SBA determined the interim final rule contains information collection requirements (ICRs) under the Act. SBA stated it obtained emergency approval for the ICRs under Office of Management and Budget Control Number 3245–0407. The ICR is associated with SBA Form 2483 (Paycheck Protection Program Application Form), SBA Form 2484 (Paycheck Protection

Program Lender's Application for 7(a) Loan Guaranty), SBA Form 3506 (CARES Act Section 1102 Lender Agreement), and SBA Form 3507 (CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lender). SBA stated the ICRs are approved for use until October 31, 2020.

Statutory authorization for the rule

SBA promulgated the interim final rule pursuant to sections 632, 634, 636, 662, 694a of title 15, United States Code, and section 1114 of Public Law 116-136.

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

SBA stated the interim final rule is economically significant but that the agency was proceeding under the emergency provision at section 6(a)(3)(D) of the Order based on the need to move expeditiously to mitigate the current economic conditions arising from the Coronavirus Disease 2019 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 power and responsibilities among the various layers of government.