



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

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June 12, 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—Loan Increases*

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—Loan Increases” (RIN: 3245–AH42). We received the rule on May 29, 2020. It was published in the *Federal Register* as an interim final rule on May 19, 2020. 85 Fed. Reg. 29842. The effective date of the rule is May 19, 2020, but the rule applies to applications submitted under the Paycheck Protection Program (PPP) through June 30, 2020, or until funds run out. SBA is holding a comment period through June 18, 2020.

On April 2, 2020, SBA posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). The CARES Act, according to SBA, temporarily adds a new program, the PPP, to the SBA’s 7(a) Loan Program. As stated by SBA, the CARES Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP. The PPP, according to SBA, is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA stated that it posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, April 30, 2020, May 5, 2020, and May 8, 2020, and the Department of the Treasury posted an additional interim final rule on April 28, 2020. This interim final rule supplements the previously posted interim final rules by providing guidance on the ability to increase certain PPP loans, according to SBA.

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 states that it is critical to meet lenders' and borrowers' needs for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020. 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 has determined that advance public notice and comment would delay the ability of certain businesses to obtain increases in their PPP loan amounts to ensure they obtain the maximum amount that they are eligible for under current guidance (guidance that was not available at the time their PPP loans were approved). This rule, as stated by SBA, is being issued to allow for immediate implementation of this program. SBA wrote that the intent of the CARES Act is for the agency to provide relief to America's small businesses, expeditiously. In light of section 1114 of the CARES Act, SBA believes that delaying the effective date of the statutory interim final rule would be contrary to the public interest.

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.



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—LOAN INCREASES”
(RIN: 3245–AH42)

(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 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 did not prepare a written statement under section 202 of the Act.

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

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

SBA determined it had good cause to waive notice and public procedure. SBA wrote that the intent of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) is for the agency to provide relief to America’s small businesses, expeditiously. This intent, according to SBA, along with the dramatic decrease in economic activity nationwide, provides good cause for the agency to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, SBA states that it is critical to meet lenders’ and borrowers’ needs for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020. 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 has determined that advance public notice and comment would delay the ability of certain businesses to obtain increases in their Paycheck Protection Program (PPP) loan amounts in order to ensure they obtain the maximum amount that they are eligible for under current guidance (guidance that was not available at the time their PPP loans were approved). This rule, as stated by SBA, is being issued to allow for immediate implementation of this program. Additionally, according to SBA, 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 CARES Act without regard to notice requirements.

Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments, according to SBA, must be submitted on or before June 18, 2020. SBA stated that it will consider these comments and the need for making any revisions as a result of these comments.

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 PRA.

Statutory authorization for the rule

SBA promulgated this final rule pursuant to the CARES Act, Public Law 116-136.

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

SBA stated that this interim final rule is economically significant under the Order, but SBA is proceeding under the emergency provision at section 6(a)(3)(D,) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency.

Executive Order No. 13,132 (Federalism)

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