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Washington, DC 20548

B-332244

June 10, 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: *Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request*

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—Requirements—Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request” (RIN: 3245–AH41). 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. 29845. The effective date of the rule is May 19, 2020, but the agency is holding a comment period through June 18, 2020.

The interim final rule revises the interim final rule posted on April 24, 2020, relating to promissory notes, authorizations, affiliation, and eligibility in connection with the implementation of a temporary new program, titled the “Paycheck Protection Program,” established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Pub. L. No. 116–136, 134 Stat. 281 (Mar. 27, 2020). According to SBA, the rule extends the date by which certain Paycheck Protection Program borrowers may repay their loans from May 7, 2020, to May 14, 2020, in order to avail themselves of a safe harbor with respect to a certification required by the CARES Act, and makes other conforming changes. This interim final rule supplements SBA’s implementation of the CARES 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 that it, in consultation with the Department of the Treasury, intends to issue additional guidance with regard to the safe harbor and extending the safe harbor deadline from May 7 to May 14 will afford Paycheck Protection Program borrowers time to review the forthcoming SBA guidance and decide whether to avail themselves of the safe harbor. According to SBA, providing advance notice and a public comment period would defeat the purpose of this interim final rule given the timeline for the existing safe harbor and short-term, temporary nature of this program. SBA also referred to authority under section 1114 of the CARES 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, 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  
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;  
PAYCHECK PROTECTION PROGRAM—REQUIREMENTS—  
EXTENSION OF LIMITED SAFE HARBOR WITH RESPECT TO  
CERTIFICATION CONCERNING NEED FOR PPP LOAN REQUEST”  
(RIN: 3245–AH41)

(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 the requirements of RFA do not apply if the rule is exempt from notice and comment procedures. Because this interim final rule, according to SBA, is exempt from notice and comment procedures, 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 this interim final rule. In its submission to us, the agency indicated it did not prepare a written statement under the Act.

(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 for this interim final rule because, according to SBA, section 1114 of the Coronavirus Aid, Relief, and Economic Security Act authorizes the agency to issue regulations to implement title I of the Act without regard to notice requirements. Pub. L. No. 116–136, 134 Stat. 281 (Mar. 27, 2020). SBA also stated it had good cause to dispense with the requirements because it would be contrary to public interest. SBA stated an advance notice and public comment period would defeat the purpose of this interim final rule extending the safe harbor deadline from May 7 to May 14, given the timeline for the existing safe harbor and short-term, temporary nature of the Paycheck Protection Program. For the same reasons, SBA also determined it had good cause to waive the delay in effective date.

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

SBA determined that this interim final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to section 1114 of Public Law 116-136.

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

SBA stated this 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 this 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.