



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

B-332293

June 25, 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—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities*

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—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities” (RIN: 3245-AH47). We received the rule on June 11, 2020. It was published in the *Federal Register* as an interim final rule on June 1, 2020. 85 Fed. Reg. 33010. The effective date of the rule is May 28, 2020. SBA is holding a comment period until July 1, 2020.

According to SBA, the interim final rule informs borrowers and lenders of SBA’s process for reviewing Paycheck Protection Program (PPP) loan applications and loan forgiveness applications. SBA stated the interim final rule supplements previously issued rules on PPP.

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 dispense with notice and comment procedures and the 30-day delayed effective date provided in the Administrative Procedure Act. 5 U.S.C. §§ 553(b)(3)(B), (d)(3). Specifically, SBA stated it is critical to meet lenders’ and borrowers’ needs for clarity concerning loan forgiveness requirements as rapidly as possible because borrowers can seek loan forgiveness as early as 8 weeks following the date of disbursement of their PPP loans.

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". The signature is written in black ink and is positioned above the printed name and title.

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—SBA LOAN REVIEW
PROCEDURES AND RELATED BORROWER AND
LENDER RESPONSIBILITIES”
(RINs: 3245-AH47)

(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 determined it did not have to prepare a regulatory flexibility analysis because SBA was not required to follow notice and comment procedures.

(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 section 202 of 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.*

SBA stated it did not follow notice and comment procedures because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), authorizes SBA to issue regulations for the Paycheck Protection Program without regard to notice requirements. SBA also waived the 30-day delay in effective date under the Act for good cause and determined there was good cause to waive notice and comment procedures. SBA determined it had good cause because it is critical to meet lenders' and borrowers' needs for clarity concerning loan forgiveness requirements as rapidly as possible because borrowers can seek loan forgiveness as early as 8 weeks following the date of disbursement of their PPP loans.

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

SBA determined the final rule contained a new information collection requirement (ICR) under the Act. The ICR will be submitted to the Office of Management and Budget (OMB) for review; it is associated with OMB Control Number 3245-0407.

Statutory authorization for the rule

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

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

SBA determined the interim final rule is economically significant but is proceeding under the emergency provision of the Order due to the COVID-19 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 powers and responsibilities among the various levels of government.