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June 26, 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, Department of the Treasury: Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness*

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) and Department of the Treasury entitled “Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness” (RINs: 3245-AH46; 1505-AC69). 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. 33004. The rule has a stated effective date of May 28, 2020. *Id.*

This interim final rule, according to SBA, helps Paycheck Protection Program (PPP) borrowers prepare and submit loan forgiveness applications as provided for in the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). SBA also stated the interim final rule helps PPP lenders who will be making the loan forgiveness decisions, informs borrowers and lenders of SBA’s process for reviewing PPP loan applications and loan forgiveness applications, 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 determined 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. Because the first PPP loans were disbursed after April 3, SBA stated, providing borrowers with certainty on loan forgiveness requirements and other program requirements will enhance their ability to carry out the purposes of the CARES Act in keeping their workers employed and paid, while at the same time taking necessary steps to maximize eligible loan forgiveness amounts. An immediate effective date also is necessary for PPP lenders who generally will make the loan forgiveness determinations as provided in the CARES Act. SBA believes that delaying the effective date of the interim final rule would be contrary to the public interest because it would delay the ability of PPP borrowers to understand with certainty which payroll and nonpayroll costs are eligible for forgiveness.

Enclosed is our assessment of SBA's and Treasury'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, flowing style.

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  
DEPARTMENT OF THE TREASURY  
ENTITLED  
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;  
PAYCHECK PROTECTION PROGRAM—REQUIREMENTS—  
LOAN FORGIVENESS”  
(RINs: 3245-AH46; 1505-AC69)

(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 determined that preparation of a written statement under section 202 of the Act is not applicable.

(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 stated this interim final rule is effective without advance notice and public comment because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Public Law 116-136, authorizes SBA to issue regulations to implement title I of the CARES Act without regard to notice requirements. According to SBA, the intent of the CARES Act is that SBA provide relief to America's small businesses expeditiously. This intent, stated SBA, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, SBA determined 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. Because the first PPP loans were disbursed after April 3, SBA stated that providing borrowers with certainty on loan forgiveness requirements and other program requirements will enhance their ability to carry out the purposes of the CARES Act in keeping their workers employed and paid, while at the same time taking necessary steps to maximize eligible loan forgiveness amounts. An

immediate effective date also is necessary for PPP lenders who generally will make the loan forgiveness determinations as provided in the CARES Act. Specifically, according to SBA, an immediate effective date is necessary for lenders so that they will have both a degree of certainty and sufficient time to develop their systems and policies and procedures in order to timely review and process loan forgiveness applications, which borrowers are permitted to begin submitting at the end of their covered period. In addition, SBA 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 determined that advance notice and public comment would delay the ability of PPP borrowers to understand with certainty which payroll costs and non-payroll costs that are incurred or paid during the covered period are eligible for forgiveness. By providing a high degree of certainty to PPP borrowers through this interim final rule, stated SBA, PPP borrowers will be able to take immediate steps to maximize their loan forgiveness amounts, for example, by either rehiring employees or not laying off employees during the covered period. Further, according to SBA, this rule is being issued to allow for immediate implementation of the forgiveness component of this program. SBA also stated, although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of this interim final rule. These comments must be submitted on or before July 1, 2020, according to SBA, and the agency will consider these comments and the need for making any revisions as a result.

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

SBA determined that this final rule contains information collection requirements under the Act. According to SBA, this rule will impose a new reporting requirement on borrowers who request forgiveness of their PPP loan. SBA stated it has developed Form 3508, "Paycheck Protection Program—Loan Forgiveness Application," for use in collecting the information required to determine whether a borrower is eligible for loan forgiveness. According to SBA, it obtained approval of Form 3508 from the Office of Management and Budget (OMB) as a modification to the existing PPP collection of information (OMB Control Number 3245–0407). This collection of information was approved under emergency procedures to facilitate immediate implementation of the PPP and expires on October 31, 2020, according to SBA.

#### Statutory authorization for the rule

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

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

This interim final rule is economically significant for the purposes of the Order according to SBA. However, SBA determined that it would proceed under the emergency provision of the Order, section 6(a)(3)(D), based on its need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency.

#### Executive Order No. 13,132 (Federalism)

SBA 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. According to SBA, it therefore determined that this rule has no federalism implications warranting preparation of a federalism assessment.