



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

B-332295

June 29, 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—Eligibility of Certain Telephone Cooperatives*

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—Eligibility of Certain Telephone Cooperatives” (RIN: 3245-AH48). We received the rule on June 12, 2020. It was published in the *Federal Register* as an interim final rule on June 11, 2020. 85 Fed. Reg. 35550. The effective date of the rule is June 8, 2020, but the rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds are exhausted. The agency is holding a comment period through July 13, 2020.

The interim final rule supplements interim final rules SBA previously issued to implement provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). See Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). According to SBA, this interim final rule provides guidance on additional eligibility requirements for certain telephone cooperatives 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 the 30-day delayed effective date under the Administrative Procedure Act and incorporated a brief statement of reasons. 5 U.S.C. § 553(d)(3). Specifically, SBA provided that lenders and borrowers need 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. According to SBA, the immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. 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 CARES 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 cursive script that reads "Shirley A. Jones".

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—
ELIGIBILITY OF CERTAIN TELEPHONE COOPERATIVES”
(RIN: 3245-AH48)

(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 provided that rules that are exempt from notice and comment are also exempt from RFA requirements. According to SBA, the interim final rule is exempt from notice and comment procedures and SBA 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, SBA indicated that it considered preparation of a written statement under 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 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 CARES Act without regard to notice requirements. SBA also determined that it had good cause to waive the delay in effective date. Specifically, SBA provided that lenders and borrowers need 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. According to SBA, the immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses.

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

SBA determined that the interim final rule will not impose any new or modify any existing information collection requirements under the Act.

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 provided that 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, the relationship between the national government and the states, or the distribution of power and responsibilities among the various layers of government.