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Washington, DC 20548

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September 18, 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

Subject: *Small Business Administration: Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs*

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—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs” (RIN: 3245-AH56). We received the rule on September 4, 2020. It was published in the *Federal Register* as an interim final rule on August 27, 2020. 85 Fed. Reg. 52881. The effective date of the rule is August 25, 2020.

The interim final rule provides additional guidance on SBA’s Paycheck Protection Program, which was established under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) (CARES Act). According to SBA, section 1102 of the CARES Act temporarily adds the Paycheck Protection Program to SBA’s 7(a) Loan Program, and SBA issued a number of interim final rules implementing the program. SBA stated that the rule supplements previous interim final rules by providing additional guidance on treatment of owners and forgiveness of certain nonpayroll costs.

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 section 1114 of the CARES Act authorizes SBA to issue

regulations to implement title I of the Act without regard to notice requirements. In addition, SBA stated that it 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. Also, according to SBA, advance public notice and comment would defeat the purpose of the rule given that SBA's authority to guarantee Paycheck Protection Program loans expired on August 8, 2020, and SBA began accepting lender loan forgiveness submissions on August 10, 2020. SBA stated that these same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (APA). See 5 U.S.C. § 553(d).

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, 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
ENTITLED
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;
PAYCHECK PROTECTION PROGRAM—TREATMENT OF
OWNERS AND FORGIVENESS OF CERTAIN NONPAYROLL COSTS”
(RIN: 3245-AH56)

(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 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 this interim final rule. In its submission to us, the agency indicated that it 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 stated that this interim final rule is effective without advance notice and public comments because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) (CARES Act), authorizes SBA to issue regulations to implement title I of the Act without regard to notice requirements. SBA additionally stated that it 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, according to SBA, advance public notice and comment would defeat the purpose of the rule given that SBA stated that its authority to guarantee Payment Protection Program loans expired on August 8, 2020, and SBA stated it began accepting lender loan forgiveness submissions on August 10, 2020. These same reasons, according to SBA provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. See 5 U.S.C. § 553(b)(3)(B), (d)(3). SBA noted that although the rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the rule, and comments must be submitted on or before September 28, 2020. SBA stated 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 determined that this interim final rule contains no information collection requirements under PRA.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to the CARES Act, Pub. L. No. 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.