



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

B-332239

June 9, 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 Electric 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 Electric Cooperatives” (RIN: 3245–AH43). 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. 29847. The effective date of the rule is May 19, 2020. SBA opened a comment period ending June 18, 2020.

According to SBA, the interim final rule provides guidance on additional eligibility requirements for certain electric cooperatives to participate in the Paycheck Protection Program. SBA stated this interim final rule supplements prior rules on the Paycheck Protection Program.

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 the 30-day delayed effective date provided in the Administrative Procedure Act. 5 U.S.C. § 553(d)(3). Specifically, SBA stated it is critical to meet lenders’ and borrowers’ needs for clarity concerning program requirements as rapidly as possible because the last day borrowers can apply for and receive a loan is June 30, 2020.

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—
ELIGIBILITY OF CERTAIN ELECTRIC COOPERATIVES”
(RIN: 3245-AH43)

(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 it was not required to publish a notice of proposed rulemaking.

(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 address the Act in the interim final rule. In its submission to us, SBA indicated that it did not prepare an analysis of the final rule 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 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. SBA determined it had good cause because it is critical to meet lenders' and borrowers' needs for clarity concerning program requirements as rapidly as possible because the last day borrowers can apply for and receive a loan is June 30, 2020. SBA opened a comment period for the interim final rule ending June 18, 2020.

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

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

Statutory authorization for the rule

SBA promulgated the 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 was 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.