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Washington, DC 20548

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June 12, 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—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility*

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—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility” (RIN: 3245–AH37). We received the rule on May 29, 2020. It was published in the *Federal Register* as an interim final rule on April 28, 2020. 85 Fed. Reg. 23450. The effective date of the rule is April 28, 2020. The rule applies to applications submitted under the Paycheck Protection Program (PPP) through June 30, 2020, or until funds run out. SBA is holding a comment period through May 28, 2020.

SBA stated the interim final rule supplements a previously posted interim rule related to the PPP, which is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 emergency. According to SBA the interim final rule provides supplemental guidance on the requirements for promissory notes and authorizations, clarification regarding eligible businesses, business participation in employee stock ownership plans, the eligibility of businesses presently involved in bankruptcy proceedings, and limited safe harbor with respect to certification concerning need for PPP loan requests.

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 that it is critical to meet lenders' and borrowers' needs for 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. Additionally, according to SBA, section 1114 of the Coronavirus Aid, Relief, and Economic Security Act authorizes the agency to issue regulations to implement title I of the Act without regard to notice requirements. Pub. L. No. 116-136, § 1114, 134 Stat. 281, 312 (Mar. 27, 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—REQUIREMENTS—
PROMISSORY NOTES, AUTHORIZATIONS, AFFILIATION, AND ELIGIBILITY”
(RIN: 3245-AH37)

(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 final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

SBA stated the requirements of RFA do not apply if the rule is exempt from notice and comment procedures. Because the rule is exempt from notice and comment procedures according to SBA, SBA determined it 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 the interim final rule. In its submission to us, the agency indicated that it did not prepare a written statement under section 202 of the Act.

(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 Act without regard to notice requirements. SBA determined it had good cause to waive the delay in effective date because it is critical to meet lenders' and borrower' needs for clarity concerning program requirements as rapidly as possible because the last day to 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 has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under PRA.

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