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June 11, 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—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans*

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—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans” (RIN: 3245–AH36). We received the rule on May 29, 2020. It was published in the *Federal Register* as an interim final rule on April 20, 2020. 85 Fed. Reg. 21747. The effective date of the rule is April 20, 2020, but the rule is applicable to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds run out. SBA is holding a comment period through May 20, 2020.

According to SBA, this interim final rule supplements the agency’s previously posted interim final rules that implemented the Paycheck Protection Program, a new temporary program created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). According to SBA, the new program will assist small businesses adversely impacted by the Coronavirus Disease 2019 pandemic. SBA states that the rule supplements the first Paycheck Protection Program Interim Final Rule with guidance for individuals with self-employment income who file a Form 1040, Schedule C. Additionally, SBA states that the rule also addresses eligibility issues for certain business concerns and requirements for certain pledges of loans made under the new program.

The Congressional Review Act (CRA) requires a 60-day delay in 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 this waiver is necessary so that small businesses are promptly informed about whether they are eligible to apply for a loan, how to apply for a loan, and the terms of the loan under section 1102 of the CARES Act 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 small businesses so that they can immediately determine their eligibility and apply for the loan with a full understanding of loan terms and conditions. Additionally, according to SBA, section 1114 of the CARES Act 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 black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

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—ADDITIONAL ELIGIBILITY
CRITERIA AND REQUIREMENTS FOR CERTAIN PLEDGES OF LOANS”
(RIN: 3245–AH36)

(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 the requirements of the Act do not apply if a rule is exempt from notice and comment procedures. Because SBA determined that this interim final rule is exempt from notice and comment procedures, SBA concluded that 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 this interim final rule. In its submission to us, the agency indicated that section 202 of the Act is not applicable to the rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 20, 2020, SBA published an interim final rule. 85 Fed. Reg. 21747. 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 so that small businesses are promptly informed about whether they are eligible to apply for a loan, how to apply for a loan, and the terms of the loan under section 1102 of the CARES Act because the last day to apply for and receive a loan is June 30, 2020. According to SBA, the immediate effective date of the rule will benefit small businesses so that they can immediately determine their eligibility and apply for the loan with a full understanding of loan terms and conditions.

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

SBA determined that this interim final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to sections 634, 636, 650, 657t, 657u, 687, 696, and 697 of title 15, United States Code, and the notes for sections 634, 636, 657t, 657u, 696, and 697 of such title.

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

SBA determined that this interim final rule is economically significant under the Order, 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 emergency created by the Coronavirus Disease 2019.

Executive Order No. 13,132 (Federalism)

SBA determined that this 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.