



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

B-332287

June 25, 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—Second Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan and Lender Reporting*

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—Second Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan and Lender Reporting” (RIN: 3245-AH45). We received the rule on June 11, 2020. It was published in the *Federal Register* as an interim final rule on May 26, 2020. 85 Fed. Reg. 31357. The effective date is May 26, 2020. SBA is holding a comment period until June 25, 2020.

According to SBA, the interim final rule amends a previously issued rule by extending the date by which certain Paycheck Protection Program (PPP) borrowers may repay their loans from May 14, 2020, to May 18, 2020, in order to avail themselves of a safe harbor with respect to the certification required by the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), and by extending the timeframe for submission of the initial SBA Form 1502 report for PPP loans.

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 procedures as well as the Administrative Procedure Act’s delay in effective date and incorporated a brief statement of reasons. Specifically, SBA determined, in

coordination with the Department of the Treasury, that the extension of the safe harbor deadline from May 14, 2020, to May 18, 2020, was necessary to allow borrowers to review previously issued guidance and decide whether to avail themselves of the safe harbor. SBA also stated advance notice and comment would defeat the purpose of the interim final rule given the existing May 22, 2020, deadline for lenders to submit the initial SBA Form 1502 report for PPP loans, which this interim final rule extends.

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, reading "Shirley A. Jones". The signature is fluid and cursive, with the first name "Shirley" being the most prominent part.

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—SECOND EXTENSION OF
LIMITED SAFE HARBOR WITH RESPECT TO CERTIFICATION
CONCERNING NEED FOR PPP LOAN AND LENDER REPORTING”
(RIN: 3245-AH45)

(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 perform a regulatory flexibility analysis because it was not required to follow notice and comment procedures.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to us, SBA indicated that it considered an analysis under the Act of this interim final rule 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 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 advance notice and comment procedures and the 30-day delay in effective date under the Act for good cause. SBA determined, in coordination with the Department of the Treasury, that the extension of the safe harbor deadline from May 14, 2020, to May 18, 2020, was necessary to allow borrowers to review previously issued guidance and decide whether to avail themselves of the safe harbor. SBA also stated advance notice and comment would defeat the purpose of the interim final rule given the existing May 22, 2020, deadline for lenders to submit the initial SBA Form 1502 report for PPP loans, which this interim final rule extends, SBA is holding a comment period until June 25, 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 interim final 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 is 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.