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July 16, 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 Revisions to First Interim Final Rule*

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 Revisions to First Interim Final Rule” (RIN: 3245-AH53). We received the rule on July 1, 2020. It was published in the *Federal Register* as an interim final rule on June 26, 2020, with request for comments on or before July 27, 2020. 85 Fed. Reg. 38301. The stated effective date of the rule is June 24, 2020. *Id.*

The interim final rule further revises SBA’s interim final rule regarding the Payment Protection Program (PPP) published in the *Federal Register* on April 15, 2020 (85 Fed. Reg. 20811) (the First Interim Final Rule), as amended by the interim final rule published in the *Federal Register* on June 18, 2020 (85 Fed. Reg. 36717), by making additional changes to the eligibility requirement related to felony convictions of applicants or owners of the applicant. According to SBA, in consultation with the Secretary of the Department of the Treasury, the Administrator of SBA (Administrator) has determined that two additional modifications to the First Interim Final Rule are appropriate to ensure a consistent approach to applicants with criminal histories. First, SBA stated that the First Interim Final Rule provided that an applicant is ineligible for a PPP loan if an owner of 20 percent or more of the equity of the applicant is presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction. SBA stated that the Administrator has determined that this restriction should be limited to pending criminal charges for felony offenses, which, according to SBA, aligns with the Administrator’s prior determination that only felony convictions (but not convictions for other types of offenses) will limit an applicant’s eligibility for the PPP. Second, SBA stated that the First Interim Final Rule provided that an applicant was ineligible for a PPP loan if an owner of 20 percent or more of the equity of the applicant is on probation or on parole.

SBA further stated that the Administrator has determined that this restriction should be limited to individuals whose probation or parole commenced within a certain time period—specifically, within the last 5 years for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, and within the last one year for other felonies.

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 on the grounds that it would be contrary to the public interest and incorporated a brief statement of reasons. Specifically, SBA stated that advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee PPP loans expires on June 30, 2020. SBA further 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). 5 USC 553(d)(3). According to SBA, although this interim final rule is effective before the date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule. SBA stated that these comments must be submitted on or before July 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.



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Enclosure

cc: Yvonne Walters
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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 REVISIONS TO FIRST INTERIM FINAL RULE”
(RIN: 3245-AH53)

(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 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 the 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 the 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 waived notice and comment procedures. According to SBA, this interim final rule is effective without advance notice and public comment because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), authorizes SBA to issue regulations to implement title I of the Act without regard to notice requirements. In addition, SBA has 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, SBA stated that advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee Paycheck Protection Program (PPP) loans expires on June 30, 2020. SBA further 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), 5 U.S.C. § 553(d)(3). According to SBA, although this interim final rule is effective before the date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule. SBA stated that these comments must be submitted on or before July 27, 2020.

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

SBA determined that this final rule contains information collection requirements under the Act. SBA has determined that this rule will require modification of the existing PPP information collection that is approved under Office of Management and Budget (OMB) Control Number 3245-0407 as an emergency request until October 31, 2020. According to SBA, conforming changes will be made to Questions 5 and 6 of Form 2483, "Borrower Application Form," and Section H of Form 2484, "Lender Application Form." SBA stated that it will submit the revisions to these forms to OMB for approval.

Statutory authorization for the rule

SBA promulgated this final rule pursuant to section 636(a)(36) of title 15, United States Code, and section 1114 of the CARES Act, Pub. L. 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.