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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 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 Revisions to First Interim Final Rule” (RIN: 3245-AH50). We received the rule on July 1, 2020. It was published in the *Federal Register* as an interim final rule on June 18, 2020. 85 Fed. Reg. 36717. The effective date of the rule is June 16, 2020. The agency is holding a comment period through July 20, 2020.

The interim final rule revises SBA’s previous interim final rule, 85 Fed. Reg. 20811, published on April 15, 2020, by changing the eligibility requirement related to felony convictions. According to SBA, applicants or owners of the applicant are ineligible for a Paycheck Protection Program loan if they have been convicted of a felony within a certain period of time. SBA stated that the change shortens the timeframe for felony convictions that do not involve fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance.

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, SBA stated that it had good cause to waive notice and comment procedures and incorporated a brief statement of reasons. SBA stated that there is good cause for dispensing with advance public notice and comment on the grounds that that would be contrary to the public interest. According to SBA, such a delay would defeat the purpose of this interim final rule because SBA’s authority to

guarantee the Paycheck Protection Program loans expires on June 30, 2020. SBA also referred to authority under section 1114 of the Act, which, according to SBA, authorizes the agency to issue regulations to implement title I of the 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 cursive script, appearing to read "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Nina D. Levine
Deputy 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 REVISIONS TO FIRST INTERIM FINAL RULE”
(RIN: 3245-AH50)

(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 the interim 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 considered preparation of a written statement under section 202 of the Act to be not applicable to the interim final rule.

(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 also determined it had good cause to waive the delay in effective date and to dispense with notice and comment procedures because SBA's authority to guarantee the Paycheck Protection Program loans expires on June 30, 2020, and, according to SBA, such a delay would be contrary to public interest and would defeat the purpose of the interim final rule. SBA noted that although the interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule.

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

SBA determined that the interim final rule will require modification to the existing Paycheck Protection Program information collection, which SBA states is approved under Office of Management and Budget (OMB) Control Number 3245-0407 as an emergency request until October 31, 2020. According to SBA, because this rule changes eligibility requirements

regarding certain felony charges, conforming changes will be made to Question 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 the OMB for approval.

Statutory authorization for the rule

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