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B-332341

July 14, 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—Revisions to the Third and Sixth Interim Final Rules*

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—Revisions to the Third and Sixth Interim Final Rules” (RIN: 3245-AH51). We received the rule on July 1, 2020. It was published in the *Federal Register* as an interim final rule on June 19, 2020. 85 Fed. Reg. 36997. All provisions of the interim final rule take effect by June 16, 2020.

The interim final rule implements certain provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), to provide immediate assistance to individuals, families, and businesses affected by the COVID-19 emergency, as well as the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act), Pub. L. No. 116-142, 134 Stat. 641 (Jun. 5, 2020), which amended provisions related to the Paycheck Protection Program (PPP) loan maturity, payments, and forgiveness terms. According to SBA, the interim final rule requires that at least 60 percent of PPP loans be used for payroll costs. Additionally, SBA states the interim final rule revised the covered time period that can be used regarding forgiveness of 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 and comment procedures and incorporated a brief statement of reasons.

According to SBA, the agency determined that there is good cause for dispensing with the delay in the effective date, and providing advance public notice and comment on the grounds that adhering to these procedures would be contrary to the public interest. Specifically, according to SBA, 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 states that small businesses that have yet to apply for and receive a PPP loan need to be informed of the terms of PPP loans as soon as possible, because the last day on which a lender can obtain an SBA loan number for a PPP loan is June 30, 2020. Further, SBA states that borrowers who have already applied for and received a PPP loan need certainty regarding how loan proceeds must be used during the covered period.

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—REVISIONS TO THE
THIRD AND SIXTH INTERIM FINAL RULES”
(RIN: 3245-AH51)

(i) Cost-benefit analysis

The Small Business Administration (SBA) anticipates the interim final rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, SBA stated it lacks data to estimate the effects of this rule.

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

SBA states rules that are exempt from notice and comment are also exempt from RFA requirements, including conducting a regulatory flexibility analysis, when, among other things, the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, SBA determined it is not required to conduct 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

The interim final rule does not discuss the Unfunded Mandates Reform Act of 1995. In its submission to us, the agency indicated the requirement to prepare a written statement under section 202 of the Act was not applicable.

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

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

This interim final rule updates the Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans (Third Interim Final Rule), posted on SBA’s website on April 14, 2020, and published in the *Federal Register*, 85 Fed. Reg. 21747 (Apr. 20, 2020), and the Interim Final Rule on Disbursements (Sixth Interim Final Rule), posted on SBA’s website on April 28, 2020, and published in the *Federal Register* on May 4, 2020, 85 Fed. Reg. 26321 (May 4, 2020), in light of the amendments under the Paycheck Protection Program Flexibility Act of 2020, Public Law 116-142.

SBA waived the notice and comment procedures and the 30-day delay under the Administrative Procedure Act. 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 and incorporated a brief statement of reasons. According to SBA, the agency determined that there is good cause for dispensing with the delay in the effective date, and providing advance public

notice and comment on the grounds that adhering to these procedures would be contrary to the public interest. Specifically, according to SBA, 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.

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, and that this rule will not modify existing recordkeeping or reporting requirements under the Act.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to section 636(a)(36) of title 15, United States Code, the Paycheck Protection Program Flexibility Act of 2020, Public Law 116-142, and section 1114 of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136.

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

SBA determined that this interim final rule is economically significant under the Order. However, SBA states it is proceeding under the emergency provision of section 6(a)(3)(D) of Executive Order 12,866 based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency.

Executive Order No. 13,132 (Federalism)

SBA determined this interim final rule does not have federalism implications since it does 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.