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July 13, 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; Department of the Treasury: Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures 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) and the Department of the Treasury (Treasury) entitled “Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules” (RINs: 3245-AH52, 1505-AC70). We received the rule on July 1, 2020. It was published in the *Federal Register* as an interim final rule on June 26, 2020. 85 Fed. Reg. 38304. The effective date of the rule is March 27, 2020, with the exception of the provision relating to the maturity date of Paycheck Protection Program (PPP) loans, which is effective June 5, 2020, and the provision relating to the cap on the amount of loan forgiveness for owner-employees and self-employed individuals, which is effective on June 24, 2020. SBA and Treasury are holding a comment period through July 27, 2020.

According to SBA and Treasury, this interim final rule revises SBA’s interim final rule on SBA loan review procedures and related borrower and lender responsibilities (First Loan Review Rule) and SBA’s and Treasury’s joint interim final rule on loan forgiveness (First Loan Forgiveness Rule) to update such interim final rules to conform with amendments made to PPP by the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act). Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020). On June 5, 2020, the President signed the Flexibility Act, which, the agencies state, changed key provisions of PPP, including provisions relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. *Id.* Specifically, SBA and Treasury state that, consistent with various directives in the Flexibility Act, the rule makes numerous changes to provisions of the First Loan Forgiveness Rule. For example, SBA and Treasury state that the rule amends the First Loan Forgiveness Rule to clarify that the portion of PPP loan proceeds that must be used for payroll costs for the loan to

be eligible for forgiveness shall be reduced from 75 percent to 60 percent, and to explain that all PPP loans made on or after June 5, 2020, shall have a minimum maturity of 5 years. Additionally, SBA and Treasury state that the rule amends the First Loan Review Rule, which, according to the agencies, informs borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications, to make changes necessary to support SBA's issuance of an alternative Loan Forgiveness Application Form.

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 and Treasury did not specifically mention CRA's 60-day delay in effective date requirement, SBA found good cause to waive notice and comment procedures and dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. 5 U.S.C. §§ 553(b)(3)(B), (d)(3). Specifically, SBA stated that these waivers are necessary to enhance the ability of lenders to make loans and process loan forgiveness applications, quickly inform small businesses that have yet to apply for and receive a PPP loan of the terms of such loans, and provide borrowers who have already applied for and received a PPP loan with information regarding how loans must be used so they can maximize the amount of loan forgiveness. Additionally, 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.

Enclosed is our assessment of SBA's and Treasury'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

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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;  
DEPARTMENT OF THE TREASURY  
ENTITLED  
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;  
PAYCHECK PROTECTION PROGRAM—REVISIONS TO  
LOAN FORGIVENESS AND LOAN REVIEW PROCEDURES  
INTERIM FINAL RULES”  
(RIN: 3245-AH52 1505-AC70)

(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 and the Department of Treasury (Treasury) 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, the agencies concluded that they are 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 and Treasury did not discuss the Act in this interim final rule. In its submission to us, SBA 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 June 26, 2020, SBA and Treasury published an interim final rule. 85 Fed. Reg. 38304. 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 notice and comment procedures and the delay in effective date to provide borrowers and lenders with certainty on both Paycheck Protection Program (PPP) loan requirements and loan forgiveness requirements following the enactment of the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act). Specifically, according to SBA, the waiver of notice and comment procedures and the delay in effective date will enhance the ability of lenders to make loans and process loan forgiveness applications, quickly inform small businesses that have yet to apply for and receive a PPP loan of the terms of such loans, and provide borrowers who have already applied for and received a PPP loan with information regarding how loans must be used so they can maximize the amount of loan forgiveness.

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

SBA and Treasury determined that this final rule modifies an existing information collection requirement (ICR) under the Act. SBA stated that it submitted the modified ICR to the Office of Management and Budget (OMB) for review, and that OMB approved such modified ICR (OMB Control Number 3245-0407) as an emergency request until October 31, 2020.

Statutory authorization for the rule

SBA and Treasury promulgated this interim final rule pursuant to sections 2(a), 3(b), and 3(c) of the Flexibility Act, Public Law 116-142, and section 1106(d)(6) of the CARES Act, Public Law 116-136.

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

SBA and Treasury determined that this interim final rule is economically significant under the Order, but that the agencies were 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 and Treasury 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 states, or on the distribution of power and responsibilities among the various layers of government.