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Washington, DC 20548

B-332526

September 18, 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

Subject: *Small Business Administration: Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program*

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 "Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program" (RIN: 3245-AH55). We received the rule on September 4, 2020. It was published in the *Federal Register* as an interim final rule on August 27, 2020. 85 Fed. Reg. 52883. SBA is holding a comment period on this final rule closing on September 28, 2020.

According to SBA, the interim final rule supplements previously issued rules by informing Paycheck Protection Program (PPP) borrowers and lenders of the process for a PPP borrower to appeal certain SBA loan review decisions under PPP to the SBA Office of Hearings and Appeals. PPP was enacted as part of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) (CARES Act), to provide loans to small businesses adversely impacted by the novel coronavirus 2019 (COVID-19) pandemic.

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. Specifically, SBA stated section 1114 of the CARES Act authorizes SBA to issue regulations to implement title I of the CARES Act without regard to notice requirements. In addition, SBA has determined that advance notice and public comment would delay the ability of PPP borrowers to

understand with certainty the process for appealing certain SBA loan review decisions under PPP.

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 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  
“APPEALS OF SBA LOAN REVIEW DECISIONS  
UNDER THE PAYCHECK PROTECTION PROGRAM”  
(RIN: 3245-AH55)

(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 rules that are exempt from notice and comment are also exempt from RFA requirements. According to SBA, the interim final rule is exempt from notice and comment procedures and SBA 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 this interim final rule. In its submission to us, SBA indicated that it considered preparation of a written statement under the Act 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 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 it had good cause to waive notice and comment procedures because advance notice and public comment would delay the ability of Paycheck Protection Program (PPP) borrowers to understand with certainty the process for appealing certain SBA loan review decisions under PPP.

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

SBA determined that the interim final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

SBA promulgated the interim final rule pursuant to section 504 of title 5; sections 632, 634, 637, 648, 656, 657t, and 687 of title 15; and section 8217 of title 38, United States Code, and Public Laws 116-136, 116-139, 116-142, and 116-147.

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

SBA determined the interim final rule is economically significant under the Order, but SBA is proceeding under the emergency provision of the Order based on the need to move expeditiously to mitigate the current economic conditions arising from the novel coronavirus disease 2019 emergency.

Executive Order No. 13,132 (Federalism)

SBA determined the interim final 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. Therefore, SBA determined the interim final rule has no federalism implications warranting preparation of a federalism assessment.