



441 G St. N.W.
Washington, DC 20548

B-332639

November 4, 2020

The Honorable Marco Rubio
Chairman
The Honorable Ben Cardin
Ranking Member
Committee on Small Business and 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—Additional 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 Department of the Treasury (Treasury) entitled “Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules” (RINs: 3245-AH59; 1505-AC71). We received the rule on October 20, 2020. It was published in the *Federal Register* as an interim final rule on October 19, 2020. 85 Fed. Reg. 66214. The effective date of this interim final rule is October 14, 2020.

According to SBA, it published an interim final rule, *Business Loan Program Temporary Changes; Paycheck Protection Program*, 85 Fed. Reg. 20811 (Apr. 15, 2020), relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Pub. L. No. 116-136, §§ 1102, 1106, 134 Stat. 281, 286–297 (Mar. 27, 2020). SBA stated that section 1102 of the CARES Act temporarily adds a new product, titled the “Paycheck Protection Program” (PPP), to SBA’s 7(a) Loan Program. SBA stated further that it and Treasury subsequently issued additional interim final rules implementing PPP. SBA noted that, on June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) was signed into law, amending the CARES Act. Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020). SBA asserts that this interim final rule revises the interim final rules published in the *Federal Register* by SBA and Treasury on June 1, 2020, and June 26, 2020. *Business Loan Program Temporary Changes; Paycheck Protection Program-Requirements-Loan Forgiveness*, 85 Fed. Reg. 33004 (June 1, 2020); *Business Loan Program Temporary Changes; Paycheck Protection Program-Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules*, 85 Fed. Reg. 38304 (June 26, 2020). SBA stated further that this interim final rule provides additional guidance concerning the forgiveness and

loan review processes for PPP loans of \$50,000 or less and, for PPP loans of all sizes, lender responsibilities with respect to the review of borrower documentation of eligible costs for forgiveness in excess of a borrower's PPP loan amount.

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). 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 that it 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. SBA asserted that advance public notice and comment would defeat the purpose of this interim final rule given that SBA began accepting lender loan forgiveness submissions on August 10, 2020. According to SBA these same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. In addition SBA also stated that this interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement title I of the Act without regard to notice requirements. Pub. L. No. 116-136, § 1114.

Enclosed is our assessment of the agencies' 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 fluid and cursive, with the first letters of each name being capitalized and prominent.

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,
DEPARTMENT OF THE TREASURY
ENTITLED
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;
PAYCHECK PROTECTION PROGRAM—ADDITIONAL REVISIONS
TO LOAN FORGIVENESS AND LOAN REVIEW PROCEDURES
INTERIM FINAL RULES”
(RINS: 3245-AH59; 1505-AC71)

(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

According to SBA, 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. SBA stated further that since this rule is exempt from notice and comment, it is not required to conduct a RFA.

(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 Unfunded Mandates Reform Act (UMRA) in this rule. In its submission to us, SBA indicated that UMRA is not applicable to this final rule.

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

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

SBA stated that this interim final rule is effective without advance notice and public comment because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorizes SBA to issue regulations to implement title I of the Act without regard to notice requirements. Pub. L. No. 116-136, § 1114, 134 Stat. 281, 312 (Mar. 27, 2020). In addition, SBA also stated that it 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. SBA asserted that advance public notice and comment would defeat the purpose of this interim final rule given that SBA began accepting lender loan forgiveness submissions on August 10, 2020. According to SBA these same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act.

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

SBA and the Department of the Treasury (Treasury) have determined that this rule modifies an existing information collection. According to the agencies, this rule reduces the burden associated with lender review of borrower documentation of eligible costs for forgiveness. Additionally, SBA stated that it has developed a second streamlined Paycheck Protection Program Loan Forgiveness Application Form 3508S (SBA Form 3508S), which is available for borrowers meeting criteria described in the instructions accompanying the form. SBA stated further that it has obtained Office of Management and Budget (OMB) approval of the modification to the existing information collection, which is currently approved as an emergency request under OMB Control Number 3245-0407 until October 31, 2020.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to sections 1102, 1106, and 1114 of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, 312 (Mar. 27, 2020); the Paycheck Protection Program and Health Care Enhancement Act; the Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020); and the Act of July 4, 2020, Pub. L. No. 116-147, 134 Stat. 660 (to extend the authority for commitments for the paycheck protection program and separate amounts authorized for other loans under section 7(a) of the Small Business Act, and for other purposes).

Executive Order No. 12866 (Regulatory Planning and Review)

SBA determined that this interim final rule is economically significant under the Order. SBA stated, however, that it is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency.

Executive Order No. 13132 (Federalism)

SBA and Treasury have 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. Therefore, accord to SBA, it has determined that this rule has no federalism implications warranting preparation of a federalism assessment.