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Washington, DC 20548

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February 5, 2021

The Honorable Sherrod Brown  
Chairman  
Ranking Member Patrick J. Toomey  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
Republican Leader  
Committee on Ways and Means  
House of Representatives

Subject: *Small Business Administration: Business Loan Program Temporary Changes;  
Paycheck Protection Program Second Draw Loans*

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 Second Draw Loans” (RIN: 3245-AH63). We received the rule on January 22, 2021. It was published in the *Federal Register* as an interim final rule on January 14, 2021. 86 Fed. Reg. 3712. The effective date of the rule is January 12, 2021.

According to SBA, this interim final rule announces the implementation of section 311 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, div. N, title III, 134 Stat. 1182, 1993 (Dec. 27, 2020), (Economic Aid Act). SBA stated that the Economic Aid Act authorizes it to guarantee additional loans under the temporary Paycheck Protection Program, which was originally established under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 Emergency Declaration issued by President Trump on March 13, 2020, 85 Fed. Reg. 15337. Section 311 of the Economic Aid Act, according to SBA, adds a second temporary program to SBA’s 7(a) Loan Program titled, “Paycheck Protection Program Second Draw Loans.” The rule, according to SBA, implements the key provisions of section 311 of the Economic Aid Act and requests public comment.

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. § 808(2). For this interim final rule, SBA stated that it

found, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest. SBA stated that the last day to apply for and receive a Paycheck Protection Program loan is March 31, 2021, and given the short duration of this program, and the urgent need to issue loans quickly, the Administrator of SBA, in consultation with the Secretary of the Department of the Treasury, has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will, according to SBA, give small businesses the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

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  
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;  
PAYCHECK PROTECTION PROGRAM SECOND DRAW LOANS”  
(RIN: 3245-AH63)

(i) Cost-benefit analysis

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

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

SBA stated that rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest. According to SBA, since this interim final rule is exempt from notice and comment, SBA 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

SBA did not discuss the Act in this interim final rule. In its submission to us, the agency indicated that it determined that preparation of a written statement under section 202 of the Act is not applicable.

(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 being issued without advance notice and public comment because section 303 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, div. N, title III, 134 Stat. 1182, 1993 (Dec. 27, 2020) (Economic Aid Act), authorizes SBA to issue regulations to implement the Economic Aid Act without regard to notice requirements. SBA additionally stated that the rule is being issued to allow for immediate implementation of this program. According to SBA, the intent of the Economic Aid Act is that SBA provide relief to America's small businesses expeditiously. SBA stated that the last day to apply for and receive a Payment Protection Program loan is March 31, 2021, and given the short duration of this program, and the urgent need to issue loans quickly, the Administrator of SBA, in consultation with the Secretary of the Department of the Treasury, determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. SBA stated that an immediate effective date will give small businesses the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. Although the rule is effective immediately, SBA

stated that comments are solicited from interested members of the public on all aspects of the rule, and that SBA will consider comments and the need for making any revisions as a result of comments.

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

SBA determined that this interim final rule will impose new recordkeeping or reporting requirements under PRA. SBA stated that the information collection consists of SBA Form 2483-SD (Paycheck Protection Program Second Draw Borrower Application Form) and SBA Form 2484-SD (Paycheck Protection Program Lender's Application—Second Draw Loan Guaranty). SBA stated that it requested emergency approval for the information collection required to implement the Second Draw Payment Protection Program.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to section 636(a)(36) of title 15, United States Code; section 1114 of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136; and section 303 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Public Law 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

SBA determined that this interim final rule is economically significant for the purposes of the Order, but stated that it is 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. 13132 (Federalism)

SBA determined that this 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 that the rule has no federalism implications warranting preparation of a federalism assessment.