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Washington, DC 20548

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February 5, 2021

The Honorable Sherrod Brown  
Chairman  
Ranking Member  
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, Department of the Treasury: Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act*

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 as Amended by Economic Aid Act” (RINs: 3245-AH62, 1505-AC74). 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. 3692. The effective date of the interim final rule is January 12, 2021.

According to SBA, the interim final rule incorporates the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) amendments, Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, title III, 134 Stat. 1187, 1999 (Dec. 27, 2020), required to be implemented by regulation within 10 days of enactment. For ease of borrower and lender reference, SBA stated the interim final rule also consolidates the interim final rules (and important guidance) issued to date governing borrower eligibility, lender eligibility, and Paycheck Protection Program (PPP) application and origination requirements for new PPP loans, as well as provides general rules relating to loan increases and loan forgiveness. SBA further stated the interim final rule is intended to govern new PPP loans made under the Economic Aid Act, as well as applications for loan forgiveness on existing PPP loans where the loan forgiveness payment has not been remitted, and should not be construed to alter or affect the requirements applicable to PPP loans closed prior to its enactment, unless the provisions apply retroactively consistent with specific applicability provisions of the Economic Aid Act as identified in this interim final rule. In addition, SBA stated that in this interim final rule, the Department of the Treasury exercises its authority to allow borrowers of first draw PPP loans to use 2019 or 2020 to calculate their maximum 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. § 808(2). SBA determined it had good cause because 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.

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,  
DEPARTMENT OF THE TREASURY  
ENTITLED  
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;  
PAYCHECK PROTECTION PROGRAM AS AMENDED BY ECONOMIC AID ACT”  
(RINS: 3245-AH62, 1505-AC74)

(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 determined the interim final rule is not subject to the Act because the interim final rule was not subject to notice and comment procedures.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to us, SBA indicated that it considered preparation of 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 stated the interim final rule was being issued without going through notice and comment procedures because section 303 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, title III, 134 Stat. 1187, 1999 (Dec. 27, 2020), authorizes SBA to issue regulations to implement the Act without going through such procedures. SBA also waived the required 30-day delay in effective date for good cause. SBA determined it had good cause because 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.

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

SBA determined the interim final rule revises information collection requirements (ICRs) associated with Office of Management and Budget (OMB) Control Number 3245-0407. SBA stated the revisions would impact the Paycheck Protection Program (PPP) Borrower Application Form (SBA Form 2483), the PPP Lender Application Form (SBA Form 2484), the Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions (SBA Form 3506), and the Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders (SBA Form 3507).

Statutory authorization for the rule

SBA promulgated the interim final rule pursuant to section 636 of title 15, United States Code, as well as Public Laws 116-136 and 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

SBA determined the interim final rule was economically significant and stated it had been reviewed by OMB.

Executive Order No. 13132 (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, and, therefore, does not have federalism implications