

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

B-333000

February 25, 2021

The Honorable Sherrod Brown
Chairman
The Honorable Patrick J. Toomey
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—Loan Forgiveness Requirements and Loan Review Procedures 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) and Department of the Treasury entitled “Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act” (RINs: 3245-AH65, 1505-AC75). We received the rule on February 9, 2021. It was published in the *Federal Register* as an interim final rule on February 5, 2021. 86 Fed. Reg. 8283. The effective date of this interim final rule is February 3, 2021.

According to SBA, this interim final rule implements changes related to the forgiveness and review of loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). See *generally* Pub. L. No. 116-136, § 1102, 134 Stat. 281, 286 (Mar. 27, 2020). SBA stated that on December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) was enacted, extending the authority to make PPP loans through March 31, 2021, revising certain PPP requirements, and permitting second draw PPP loans. See *generally* Pub. L. No. 116-260, § 276, 134 Stat. 1182, 1979 (Dec. 27, 2020). SBA stated further that this interim final rule consolidates prior rules related to forgiveness and reviews of PPP loans and incorporates changes made by the Economic Aid Act, including with respect to forgiveness of second draw PPP loans.

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 stated that it, for good cause, found that a 60-day delay to provide public notice is impracticable and contrary to the public interest. According to SBA, loans that were made in 2020 but that have not yet received forgiveness will be forgiven based on changes in the Economic Aid Act, as implemented in this interim final rule. SBA stated that, given the urgent need to provide borrowers that are eligible for loan forgiveness with timely relief, it determined that it is impracticable and not in the public interest to delay the effective date of the rule, and that an immediate effective date will allow SBA to continue remitting forgiveness payments to lenders without disruption.

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 that reads "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—LOAN FORGIVENESS REQUIREMENTS
AND LOAN REVIEW PROCEDURES AS AMENDED BY ECONOMIC AID ACT”
(RINs: 3245-AH65, 1505-AC75)

(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 for this interim final rule (IFR).

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

According to SBA, because this IFR 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

In its submission to us, SBA indicated that it considered the preparation of an Unfunded Mandates Reform Act analysis in this IFR 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 this IFR is being issued without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the Economic Aid Act without regard to notice requirements. SBA stated that it found good cause to waive the 30-day delay of effective date required by the Administrative Procedure Act because such procedure would be impracticable, unnecessary, or contrary to the public interest. According to SBA, loans that were made in 2020 but that have not yet received forgiveness will be forgiven based on changes in the Economic Aid Act, as implemented in this IFR. SBA stated that, given the urgent need to provide borrowers that are eligible for loan forgiveness with timely relief, it determined that it is impracticable and not in the public interest to delay the effective date of the rule, and that an immediate effective date will allow SBA to continue remitting forgiveness payments to lenders without disruption. Although this IFR is effective immediately, SBA stated that it is soliciting comments from interested members of the public on all aspects of the interim final rule. The comment period for this IFR is 30-days after publication.

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

SBA determined that this IFR contains information collection requirements under the Act. SBA stated that it has requested the Office of Management and Budget's (OMB) emergency approval of the revisions to the information collection to enable borrowers to begin submitting loan forgiveness applications with the Economic Aid Act changes as quickly as possible and to enable borrowers with disclosure requirements to meet the statutory deadline for disclosure.

According to SBA, this rule will require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collection (OMB Control Number 3245-0407) as a result of amendments made to the PPP by the Economic Aid Act and implemented in this IFR. SBA stated that the revisions will affect the PPP Loan Forgiveness Application Form 3508, PPP Loan Forgiveness Application Form 3508EZ, and PPP Loan Forgiveness Application Form 3508S. SBA stated further that to address the conflict of interest provisions in section 322 of the Economic Aid Act, it has developed a new form, "Paycheck Protection Program—Borrower's Disclosure of Certain Controlling Interests Form 3508D," which is required for certain borrowers who have disclosure requirements under the Economic Aid Act. *See generally* Pub. L. No. 116-260, § 322, 134 Stat. 1182, 2017 (Dec. 27, 2020).

Statutory authorization for the rule

SBA promulgated this rule pursuant to section 636 of title 15, United States Code; section 303 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, 134 Stat. 1182 (Dec. 27, 2020); and section 1114 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020)

Executive Order No. 12866 (Regulatory Planning and Review)

SBA stated that this IFR is economically significant. SBA stated further that it 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 coronavirus disease 2019 emergency.

Executive Order No. 13132 (Federalism)

SBA has determined that this IFR 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, this IFR has no federalism implications.