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Washington, DC 20548

B-333095

March 26, 2021

The Honorable Ben Cardin
Chairman
The Honorable Rand Paul
Ranking Member
Committee on Small Business & Entrepreneurship
United States Senate

The Honorable Nydia M. Velázquez
Chairwoman
The Honorable Blaine Luetkemeyer
Ranking Member
Committee on Small Business
House of Representatives

Subject: *Small Business Administration: Business Loan Program Temporary Changes;
Paycheck Protection Program—Revisions to Loan Amount Calculation and Eligibility*

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—Revisions to Loan Amount Calculation and Eligibility” (RIN: 3245-AH67). We received the rule on March 12, 2021. It was published in the *Federal Register* as an interim final rule on March 8, 2021. 86 Fed. Reg. 13149. The effective date is March 4, 2021.

According to SBA, this interim final rule implements changes related to loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) (CARES Act), to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). SBA stated that the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, 134 Stat. 1182, 1993 (Dec. 27, 2020) (Economic Aid Act), extended the authority to make PPP loans through March 31, 2021, revised certain PPP requirements, and permitted second draw PPP loans. SBA also stated that the rule allows individuals who file an IRS Form 1040, Schedule C, to calculate their maximum loan amount using gross income, removes the eligibility restriction that prevents businesses with owners who have non-financial fraud felony convictions in the last year from obtaining PPP loans, and removes the eligibility restriction that prevents businesses with owners who are delinquent or in default on their federal student loans from obtaining 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). Here, SBA stated that for good cause it found that a 60-day delay to provide public notice is impracticable and contrary to the public interest. SBA stated that section 1114 of the CARES Act, and section 303 of the Economic Aid Act, authorize SBA to issue regulations to implement the PPP without regard to notice requirements. Additionally, SBA stated that the rule is being issued to allow for immediate implementation of changes. According to SBA, the intent of both the CARES Act and the Economic Aid Act is that SBA provide relief to America's small businesses expeditiously. Further, according to SBA, given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021, SBA, in consultation with the Department of the Treasury, determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date, according to SBA, will allow it to give small businesses affected by the rule 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 fluid and cursive, with the first letters of each word 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
ENTITLED
“BUSINESS LOAN PROGRAM TEMPORARY CHANGES;
PAYCHECK PROTECTION PROGRAM—REVISIONS TO
LOAN AMOUNT CALCULATION AND ELIGIBILITY”
(RIN: 3235-AH67)

(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 stated that the requirements of RFA do not apply if the rule is exempt from notice and comment procedures. Because, according to SBA, this interim final rule is exempt from notice and comment procedures, SBA determined it 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, the agency indicated the Act was not applicable to the rule.

(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, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020) (CARES Act) and section 303 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, 134 Stat. 1182, 1993 (Dec. 27, 2020) (Economic Aid Act) authorize the agency to issue regulations to implement the Paycheck Protection Program (PPP) without regard to notice requirements. In addition, SBA stated this interim final rule is being issued to allow for immediate implementation of the changes, and the intent of the CARES Act and the Economic Aid Act is that SBA provide relief to small businesses expeditiously. SBA stated that it, in consultation with the Department of the Treasury, determined that it is impractical and not in the public interest to provide a 30-day delayed effective date, given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021. According to SBA, an immediate effective date will allow SBA to give small businesses affected by the rule 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 that this interim final rule will require revisions to existing recordkeeping or reporting requirements of PPP information collections (Office of Management and Budget (OMB) Control Numbers 3245-0407 and 3245-0417). SBA stated that it requested OMB emergency approval of the revisions to the information collections to give small businesses affected by the rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to sections 636(a)(36), 636(a)(37), and 636m of title 15, United States Code; and section 1114 of the CARES Act, Public Law 116-136, and section 303 of the Economic Aid Act, Public Law 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

SBA stated that this interim final rule is economically significant but that the agency was 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.