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April 5, 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 as Amended by American Rescue Plan 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 American Rescue Plan Act” (RIN: 3245-AH77). We received the rule on March 23, 2021. It was published in the *Federal Register* as an interim final rule on March 22, 2021. 86 Fed. Reg. 15083. The effective date is March 18, 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 (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). See Pub. L. No. 116-136, 134 Stat. 281 (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 Pub. L. No. 116-260, 134 Stat. 1182. SBA also stated that on January 14, 2021, it published an interim final rule that incorporated the Economic Aid Act amendments to PPP and consolidated the interim final rules (and important guidance) that had been issued governing borrower eligibility, lender eligibility, and PPP application and origination requirements for PPP loans. 86 Fed. Reg. 3692. SBA stated further that on March 11, 2021, the American Rescue Plan Act of 2021 (American Rescue Plan Act) was enacted expanding eligibility for first and second draw PPP loans, revising the exclusions from payroll costs for purposes of loan forgiveness, and providing that a PPP borrower that receives a PPP loan after December 27, 2020, can be approved for a Shuttered Venue Operator Grant under certain conditions. See Pub. L. No. 117-2, 135 Stat. 4. SBA notes that this interim final rule revises PPP rules to incorporate the American Rescue Plan

Act's amendments to PPP. Additionally, according to SBA, this interim final rule clarifies the eligibility for first draw PPP loans for applicants that are assigned a North American Industry Classification System (NAICS) code beginning with 72 and have more than one physical location and clarifies certain payroll cost exclusions included in the Economic Aid Act.

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), 808(2). According to SBA, the intent of the CARES Act, the Economic Aid Act, and the American Rescue Plan Act is that SBA provide relief to America's small businesses and nonprofit organizations expeditiously. SBA stated, given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021, it has determined that it is impractical and not in the public interest to provide a delayed effective date. SBA also stated that, an immediate effective date will allow SBA to give small businesses and nonprofit organizations affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. SBA stated further that these reasons support good cause justification to waive the 60-day delay in effective date.

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.



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Enclosure

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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 AS AMENDED
BY AMERICAN RESCUE PLAN ACT”
(RIN: 3245-AH77)

(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 (IFR).

(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 the 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 that this IFR is exempt from notice and comment. Thus, SBA asserts it is not required to conduct a regulatory flexibility analysis for this IFR.

(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 an analysis under the Act for 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 that this IFR is being issued without advance notice and public comment because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and section 303 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) authorize SBA to issue regulations to implement the Paycheck Protection Program (PPP) without regard to notice requirements. *See generally* Pub. L. No. 116-136, § 1114, 134 Stat. 281, 312 (Mar. 27, 2020); Pub. L. No. 116-260, § 303, 134 Stat. 1182, 1374–1375 (Dec. 27, 2020). SBA also stated that this IFR is being issued to allow for immediate implementation of these changes. According to SBA, the intent of the CARES Act, the Economic Aid Act, and the American Rescue Plan Act of 2021 (American Rescue Plan Act) is that SBA provide relief to America's small businesses and nonprofit organizations expeditiously. *See generally* Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021). SBA asserts that given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021, it has 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 allow it to give small businesses and nonprofit organizations affected by this IFR the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. Lastly, SBA also stated that comments are solicited from interested members of the public on all aspects of this IFR.

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

SBA determined that this IFR 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 has requested emergency approval of the revisions to the information collections, from OMB, to give small businesses and nonprofits affected by this IFR 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 IFR pursuant to section 636 of title 15, United States Code; section 1114 of the CARES Act, Public Law 116-136; section 303 of the Economic Aid Act, Public Law 116-260; and sections 5001 and 5005 of the American Rescue Plan Act, Public Law 117-2.

Executive Order No. 12866 (Regulatory Planning and Review)

According to SBA this IFR is economically significant. SBA stated that it is proceeding under the emergency provision of Executive Order 12866 section 6(a)(3)(D) 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. Therefore, according to SBA, this IFR has no federalism implications warranting preparation of a federalism assessment.