



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

B-335806

December 15, 2023

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable John Boozman  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Glenn Thompson  
Chairman  
The Honorable David Scott  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Rural Business-Cooperative Service: Guaranteed Loanmaking and Servicing Regulations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Rural Business-Cooperative Service (USDA) entitled “Guaranteed Loanmaking and Servicing Regulations” (RIN: 0570-AB07). We received the rule on December 1, 2023. It was published in the *Federal Register* as a final rule on November 24, 2023. 88 Fed. Reg. 82225. The effective date is November 24, 2023.

The final rule, according to USDA, amends an interim rule published on May 22, 2020. 85 Fed. Reg. 31035. USDA stated that the interim rule amended the Business and Industry Guaranteed Loan Program to allow flexibility to obligate federal funds for guaranteed loans pursuant to the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), in response to the national COVID-19 public health emergency. USDA explained that this final rule addresses public comments received on the interim rule and makes clarifying modifications identified by commenters and USDA.

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). In this final rule, USDA mentioned the good cause provisions of section 553 of title 5, United States Code, but did not incorporate a statement of the findings and its reasons in the rule. This final rule was published in the *Federal Register* on November 24, 2023. 88 Fed. Reg. 82225. The final rule has a stated effective date of November 24, 2023. Therefore, based on the date of publication of the rule in the *Federal Register*, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of USDA'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: Michele Brooks  
Director, Regulations Management Division  
Rural Development Innovation Center  
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
RURAL BUSINESS-COOPERATIVE SERVICE  
ENTITLED  
“GUARANTEED LOANMAKING AND SERVICING REGULATIONS”  
(RIN: 0570-AB07)

(i) Cost-benefit analysis

The United States Department of Agriculture, Rural Business-Cooperative Service (USDA) stated that the economic impacts of this final rule are minimal or de minimus when set against the benchmark for the interim rule. USDA explained that this rule provides clarification of USDA’s position on the eligible use of funds for auditing purposes and future servicing actions including loss payments to lenders. Additionally, USDA stated that it will be able to reference the rule if the Business and Industry Program is utilized again to directly respond to and alleviate the issues resulting from another national public health emergency.

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

USDA stated that it is not required to conduct a regulatory flexibility analysis because rules that are exempt from notice and comment are also exempt from 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.

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

USDA stated that this final rule contains no federal mandates under the Act for state, local, and tribal governments, or the private sector and, therefore, the rule is not subject to the requirements of sections 202 and 205 of the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive*

*Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

USDA does not discuss the Act in this final rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

USDA published an interim rule on May 22, 2020. 85 Fed. Reg. 31035. USDA received comments from one commenter and addressed comments in this final rule.

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

USDA stated that the information collection activities associated with this final rule are approved under OMB Control Number 0570-0069 and that this final rule contains no new reporting or recordkeeping burdens.

Statutory authorization for the rule

USDA promulgated this final rule pursuant to section 301 of title 5, and sections 1932(a) and 1989 of title 7, United States Code; and Public Law 116-136.

Executive Order No. 12866 (Regulatory Planning and Review)

USDA stated that this final rule has been reviewed by OMB and determined to be significant for the purposes of the Order.

Executive Order No. 13132 (Federalism)

USDA stated that this final rule does not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, USDA stated that the rule does not impose substantial direct compliance costs on state and local governments and, therefore, USDA determined that consultation with the states is not required.