

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

B-333486

August 10, 2021

The Honorable Ben Cardin
Chair
The Honorable Rand Paul
Ranking Member
Committee on Small Business and 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—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment*

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—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment” (RIN: 3245-AH79). We received the rule on August 3, 2021. It was published in the *Federal Register* as an interim final rule on July 30, 2021. 86 Fed. Reg. 40921. The effective date is July 28, 2021.

The interim final rule, according to SBA, implements changes related to the forgiveness of loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), as amended, to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). SBA stated it has issued a number of interim final rules implementing the PPP Program. This interim final rule, according to SBA, further streamlines the forgiveness process for PPP loans of \$150,000 or less by allowing lenders to use a COVID Revenue Reduction Score at the time of forgiveness to document the required revenue reduction for Second Draw PPP Loans, and establishing a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method of processing loan forgiveness applications. SBA stated that this interim final rule also extends the loan deferment period for those PPP loans where the borrower timely files an appeal of a final SBA loan review decision with the SBA Office of Hearings and Appeals.

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). SBA stated that this interim final rule is being issued without advance notice and public comment because section 1114 of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, and section 303 of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act (Economic Aid Act), Pub. L. No. 116-260, div. N, title III, 134 Stat. 1182, 1993 (Dec. 27, 2020), authorize SBA to issue regulations to implement the PPP without regard to notice requirements.

Also, SBA stated that it finds good cause for setting aside the advance notice-and-public-comment procedure because the procedure would be impracticable and contrary to the public interest. The intent of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, and the Economic Aid Act, Pub. L. No. 116-260, 134 Stat. at 1993, according to SBA, is to afford SBA the flexibility to provide relief to America's small businesses and nonprofit organizations expeditiously. SBA stated that given the urgent need to provide borrowers with timely relief, the purpose of the rule is to minimize the burdens of the current loan forgiveness process that, without modification, could result in borrowers unnecessarily having to make principal and interest payments on loans that should be forgiven. SBA stated that if it were to follow the advance notice-and-public-comment process, then issuance of the rule would be delayed by at least 3 months. SBA noted that a significant number of borrowers will have to apply for loan forgiveness in the next 3 months, and if the proposed rule is still undergoing notice and comment, these borrowers will be applying under the current process, which would mean these borrowers could unnecessarily have to make principal and interest payments on loans that should be forgiven and would not be positively impacted by a later rule change.

SBA stated that, for the same reasons, it has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date, according to SBA, will allow it to expedite loan forgiveness to small businesses and nonprofit organizations and remit forgiveness payments to lenders. Finally, SBA stated that this good cause justification also supports waiver of the 60-day delayed effective date for major rules under CRA.

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.



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—COVID REVENUE
REDUCTION SCORE, DIRECT BORROWER FORGIVENESS
PROCESS, AND APPEALS DEFERMENT”
(RIN: 3245-AH79)

(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 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. SBA stated that since this interim final rule 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 preparation of a 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 that this interim final rule is being issued without advance notice and public comment because section 1114 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), and section 303 of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act (Economic Aid Act), Pub. L. No. 116-260, div. N, title III, 134 Stat. 1182, 1993 (Dec. 27, 2020), authorize SBA to issue regulations to implement the Paycheck Protection Program (PPP) without regard to notice requirements.

Also, SBA stated that it finds good cause for setting aside the advance notice-and-public-comment procedure because the procedure would be impracticable and contrary to the public interest. The intent of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, and the Economic Aid Act, Pub. L. No. 116-260, 134 Stat. at 1993, according to SBA, is to afford SBA the flexibility to provide relief to America’s small businesses and nonprofit organizations expeditiously. SBA stated that given the urgent need to provide borrowers with timely relief, the purpose of the rule

is to minimize the burdens of the current loan forgiveness process that, without modification, could result in borrowers unnecessarily having to make principal and interest payments on loans that should be forgiven. SBA stated that if it were to follow the advance notice-and-public-comment process, then issuance of the rule would be delayed by at least 3 months. SBA noted that a significant number of borrowers will have to apply for loan forgiveness in the next 3 months, and if the proposed rule is still undergoing notice and comment, these borrowers will be applying under the current process, which would mean these borrowers could unnecessarily have to make principal and interest payments on loans that should be forgiven and would not be positively impacted by a later rule change.

SBA stated that, for the same reasons, it has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date, according to SBA, will allow it to expedite loan forgiveness to small businesses and nonprofit organizations and remit forgiveness payments to lenders.

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

SBA stated that it has determined that this interim final rule will require revisions to existing recordkeeping or reporting requirements of the PPP information collection, Office of Management and Budget (OMB) Control Number 3245-0407. Specifically, SBA stated that SBA Form 3508S will be revised to incorporate the direct borrower forgiveness process and the COVID Revenue Reduction Score, and SBA Form 3508D will be revised to incorporate the direct borrower forgiveness process. SBA stated that it has requested OMB emergency approval of the revisions to the information collections to give small businesses and nonprofits affected by the rule the maximum amount of time to apply for loan forgiveness under the new procedures.

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 of the United States Code, and section 1114 of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, and section 303 of the Economic Aid Act, Pub. L. No. 116-260, 134 Stat. at 1993.

Executive Order No. 12866 (Regulatory Planning and Review)

SBA stated that OMB's Office of Information and Regulatory Affairs has determined that this interim final rule is economically significant for the purposes of the Order. However, SBA stated that it is proceeding under the emergency provisions 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. Therefore, SBA determined that the rule has no federalism implications warranting preparation of a federalism assessment.