

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

B-333569

September 27, 2021

The Honorable Ben Cardin
Chairman
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: Disaster Loan Program Changes*

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 “Disaster Loan Program Changes” (RIN: 3245-AH80). We received the rule on September 10, 2021. It was published in the *Federal Register* as an interim final rule on September 8, 2021. 86 Fed. Reg. 50214. The effective date is September 8, 2021.

SBA stated that the interim final rule implements changes to the Disaster Loan Program regulations. Specifically, SBA stated that for applications for COVID-19 Economic Injury Disaster (COVID EIDL) loans, the rule is changing the definition of affiliation, the eligible uses of loan proceeds, and application of the size standard to certain hard-hit eligible entities, and is establishing a maximum loan limit for borrowers in a single corporate group. In addition, according to SBA, for all disaster assistance programs, SBA is changing which SBA official may make the decision on the appeal of an application that has been declined for a second time.

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, for good cause, it determined a 60-day delay is impractical and not in the public interest. According to SBA, an immediate effective date will give small businesses, nonprofit organizations, qualified agricultural businesses, and independent contractors affected by the interim final rule the maximum amount of time to apply for loans and SBA the maximum amount of time to process applications before the program ends on December 31, 2021.

SBA also stated that it determined there is good cause for dispensing with advance public notice and comment under the Administrative Procedure Act on the grounds that it would be impracticable and contrary to the public interest. 5 U.S.C. § 553(b)(3)(B). According to SBA, the intent of the statutory COVID financial assistance programs, including the COVID EIDL program, is that SBA provides relief to America's small businesses expeditiously. SBA further stated that the continuing decrease in economic activity in key economic sectors as compared to 2019 and the re-imposition of mask requirements and other public-health measures throughout the country because of the variants (including Delta) of COVID-19, provides good cause for SBA to dispense with advance notice and comment rulemaking, which would take months.

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
ENTITLED
“DISASTER LOAN PROGRAM CHANGES”
(RIN: 3245-AH80)

(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 determined that since this 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 written 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 it determined there is good cause to issue this interim final rule without advance notice and public comment because doing so would be impracticable, unnecessary, and contrary to the public interest. SBA stated that other SBA COVID-19 relief programs have recently ended or exhausted the funding provided for the program, yet businesses and nonprofit organizations are still in need of support. SBA further states that an immediate effective date will give small businesses, nonprofit organizations, qualified agricultural businesses, and independent contractors affected by this interim final rule the maximum amount of time to apply for loans and SBA the maximum amount of time to process applications before the program ends on December 31, 2021. According to SBA, given the short duration of this program, SBA has determined that it is impractical and not in the public interest to provide a delayed effective date.

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

SBA determined that this interim final rule will require revisions to the COVID-19 Economic Injury Disaster Loan Application information collection, Office of Management and Budget (OMB) Control Number 3245-0406. SBA stated it has obtained emergency approval of the revisions, including waiver of public comment notices.

Statutory authorization for the rule

SBA promulgated this interim final rule pursuant to various sections of title 15, United States Code, sections 1110 and 1114 of Public Law 116-136, and section 331 of Public Law 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

SBA stated that OMB has determined that this interim final rule is economically significant under the Order. SBA stated it is proceeding under an emergency provision of the Order based on the need to move expeditiously to mitigate the current economic hardships and conditions arising from the COVID-19 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.