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Office of the General Counsel

B-278403

October 29, 1997

The Honorable Orrin G. Hatch  
Chairman  
The Honorable Patrick J. Leahy  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate

The Honorable Henry J. Hyde  
Chairman  
The Honorable John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
House of Representatives

Subject: Department of Justice, Immigration and Naturalization Service: Affidavits of Support on Behalf of Immigrants

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 Justice, Immigration and Naturalization Service (INS), entitled "Affidavits of Support on Behalf of Immigrants" (RIN: 1115-AE58). We received the rule on October 16, 1997. It was published in the Federal Register as an interim rule on October 20, 1997. 62 Fed. Reg. 54346.

The interim rule amends the INS regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. It also specifies (1) procedures that federal, state, and local agencies or private entities must follow to seek reimbursement from the sponsor for provision of means-tested public benefits, and (2) procedures for imposing the civil penalty provided for under section 213A of the act, if the sponsor fails to give notice of any change of address.

Enclosed is our assessment of the INS' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the INS complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Justice, Immigration and Naturalization Service, is Norman Rabkin, Director, Administration of Justice Issues. Mr. Rabkin can be reached at (202) 512-8777.

Robert P. Murphy  
General Counsel

Enclosure

cc: The Honorable Doris Meissner  
Commissioner  
Immigration and Naturalization Service

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE DEPARTMENT OF JUSTICE,  
IMMIGRATION AND NATURALIZATION SERVICE  
ENTITLED  
"AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS"  
(RIN: 1115-AE58)

(i) Cost-benefit analysis

The Immigration and Naturalization Service discusses the costs and benefits in the preamble to the interim rule, as required by Executive Order No. 12866.

In view of the fact that most immigrants are barred from receiving means-tested public benefits for their first 5 years in the United States, INS does not expect the majority of the savings resulting from this interim rule to materialize until after the fifth anniversary of the immigration reform measure.

The greatest savings will be in the Medicaid program since most permanent residents will remain ineligible for Supplemental Security Income and food stamp benefits until they become U.S. citizens. Savings in the Medicaid program due to the deeming of sponsor income and resources are projected as becoming significant in the sixth full year following implementation, fiscal year 2003. The savings for that year are estimated to be \$300 million, increasing to \$600 million in 2004, \$900 million in 2005, \$1.3 billion in 2006, and \$1.7 billion in 2007.

The administrative cost associated with these provisions may be offset by an adjustment to fees for Consular immigrant visas and INS adjustment of status applications. The cost of the additional review of the new affidavit is not expected to exceed \$1 million annually.

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

The Commissioner has determined that the interim rule will not have a significant economic impact on a substantial number of small entities because the rule applies to individual sponsors and the sponsored immigrant, who are not within the definition of small entities established by 5 U.S.C. § 601.

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

The interim rule does not impose a federal intergovernmental or private sector mandate, as defined in the Unfunded Mandates Reform Act of 1995.

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

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

The Commissioner has found that good cause exists to make the rule effective without the use of the notice and comment procedures of 5 U.S.C. § 553.

Sections 531(b) and 551(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 make the new affidavit of support requirement effective 60 days after the promulgation of the new affidavit support form. To avoid the confusion of having the form, which was promulgated simultaneously with the issuance of this interim rule, in use without this implementing rule, this rule will be effective in 60 days. Therefore, the Commissioner found there was inadequate time for notice and comment. However, this interim rule includes a request for comments to be submitted by February 17, 1998, and the comments will be considered prior to the issuance of a final rule.

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

The information collection requirements of the interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Affidavit of Support Under Section 213A of the Act and the Contract Between Sponsor and Household Member have been assigned OMB Control No. 1115-0214. The Sponsor's Notice of Change of Address has been assigned Control No. 1115-0215.

Statutory authorization for the rule

The interim rule was promulgated pursuant to section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, September 30, 1996, 8 U.S.C. § 1183a.

Executive Order No. 12866

The interim rule has been determined to be a "significant regulatory action" and was reviewed by the Office of Management and Budget because, over time, it will have a significant economic impact on the federal government in excess of \$100 million. The Office of Information and Regulatory Affairs approved the interim rule as

complying with the requirements of the order based on information supplied by INS, which included a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

Executive Order No. 12612

The INS has found that the interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order No. 12612.