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August 28, 2019

The Honorable Ron Johnson
Chairman
The Honorable Gary C. Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Bennie G. Thompson
Chairman
The Honorable Mike Rogers
Ranking Member
Committee on Homeland Security
House of Representatives

Subject: *Department of Homeland Security: Inadmissibility on Public Charge Grounds*

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 Homeland Security (DHS) entitled "Inadmissibility on Public Charge Grounds" (RIN: 1615-AA22). We received the rule on August 14, 2019. It was published in the *Federal Register* as a final rule on August 14, 2019. 84 Fed. Reg. 41292. The effective date of the rule is October 15, 2019.

This final rule prescribes how DHS will determine whether an alien applying for admission or adjustment of status is inadmissible to the United States under section 212(a)(4) of the Immigration and Nationality Act because he or she is likely at any time to become a public charge. 8 U.S.C. § 1182(a)(4). The final rule defines "public charge" and "public benefit." The final rule contains provisions governing the issuance of public charge bonds. Finally, this rule includes a requirement that aliens seeking an extension of stay or change of status demonstrate that they have not, since obtaining the nonimmigrant status they seek to extend or change, received public benefits over the designated threshold, as defined in this rule.

Enclosed is our assessment of DHS'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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samantha Deshommes
Chief, Regulatory Coordination Division
U.S. Citizenship and Immigration Services
Department of Homeland Security

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY
ENTITLED
“INADMISSIBILITY ON PUBLIC CHARGE GROUNDS”
(RIN: 1615-AA22)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) included in the final rule a summary of the costs and benefits of the rule, as determined by DHS. DHS estimated that the additional total cost of the rule will be approximately \$35,202,698 annually. DHS also estimated that the rule will result in a total reduction in transfer payments from federal and state governments of approximately \$2.47 billion annually. DHS estimated that the reduction in transfer payments attributable to this rule from federal and state governments, discounted over 10 years, will be approximately \$21.0 billion at a 3 percent discount rate and about \$17.3 billion at a 7 percent discount rate. However, DHS noted there may be additional reductions in transfer payments that it was unable to quantify.

DHS stated that the primary benefit of the final rule would be to better ensure that aliens who are admitted to the United States, seek extension of stay or change of status, or apply for adjustment of status will be self-sufficient. DHS also anticipates this rule's elimination of Form I-864W will have a benefit of \$36.47 per petitioner, but DHS stated it is unable to determine the annual number of filings of Form I-864W and, therefore, currently is unable to estimate the total annual cost savings of this change. DHS also stated that this rule will produce some benefits for T nonimmigrants applying for adjustment of status based on their T nonimmigrant status, as this population will no longer need to submit Application for Waiver of Grounds of Inadmissibility (Form I-601). DHS estimated the total benefit for this population will be \$15,176 annually.

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

DHS prepared a Final Regulatory Flexibility Analysis. This analysis had six parts with the headings:

- (1) a statement of the need for, and objectives of, the rule;
- (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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

DHS determined that this final rule does not include any federal mandate that may result in increased expenditures by state, local, or tribal governments; that this rule does not increase private sector expenditures by more than \$165 million annually (\$100 million adjusted for inflation); and that this rule does not significantly or uniquely affect small governments.

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

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

On October 10, 2018, DHS published a proposed rule. 83 Fed. Reg. 51114. According to DHS, it received 266,077 public comment submissions in response to the proposed rule. DHS observed that the majority of comment submissions were from individual or anonymous commenters, and that other commenters included healthcare providers; research institutes and universities; law firms and individual attorneys; federal, state, local, and tribal elected officials; state and local government agencies; religious and community organizations; advocacy groups; unions; federal government officials; and trade and business organizations. DHS also noted that, while some commenters provided support for the rule, the vast majority of commenters opposed the rule. DHS responded to comments in the final rule.

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

DHS determined that this final rule impacted 14 information collection requirements under the Act. DHS's annual burden estimate for these information collection requirements ranged from 960 hours with a cost of \$0 to 1,720,188 hours with a cost of \$177,943,892.

Statutory authorization for the rule

DHS promulgated this final rule under the authority of sections 301, 552, and 552a of title 5; sections 111, 112, 202, 236, and 271 of title 6; sections 1101 and note, 1102, 1103, 1182 and note, 1183, 1184, 1185 note, 1186a, 1187, 1221, 1223, 1225, 1226, 1227, 1255, 1258, 1281, 1282, 1301 to 1305, 1356, 1359, 1365b, and 1372 of title 8; section 9701 of title 31; and sections 1806, 1901 note, and 1931 note of title 48, United States Code, and section 643 of Public Law 104-208; section 202 of Public Law 105-100, section 902 of Public Law 105-277; Public Law 106-386, Public Law 107-296, title VII of Public Law 110-229, and Public Law 112-54. DHS also cited the authority of Executive Order 12,356 and part 2 of title 8, Code of Federal Regulations. In addition, DHS included a section in the final rule entitled "Legal Authority" that states the authority under which it promulgated the rule.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) designated this final rule as a “significant regulatory action” that is economically significant because it estimated that the final rule would have an annual effect on the economy of \$100 million or more, under the Order. OMB has reviewed this final regulation.

Executive Order No. 13,132 (Federalism)

DHS determined that this final rule does not have federalism implications because it does 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 levels of government.