



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

B-332324

July 13, 2020

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security: Asylum Application, Interview, and Employment Authorization for Applicants*

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 “Asylum Application, Interview, and Employment Authorization for Applicants” (RIN: 1615-AC27). We received the rule on June 26, 2020. It was published in the *Federal Register* as a final rule on June 26, 2020. 85 Fed. Reg. 38532. The effective date of the rule is August 25, 2020. *Id.*

The final rule will modify DHS’s regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. According to DHS, the amendments will (1) reduce incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications to obtain employment authorization or other non-asylum-based forms of relief such as cancellation of removal, and (2) discourage illegal entry into the United States. According to DHS, the changes will also reduce incentives for aliens to intentionally delay asylum proceedings in order to extend the period of employment authorization based on the pending asylum application and will simplify the adjudication process.

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). It was published in the *Federal Register* as a final rule June 26, 2020. 85 Fed. Reg. 38532. However, as of July 13, 2020, receipt is not reflected by either House of Congress in the *Congressional Record*. According to a DHS official, the Senate received the rule on June 30, 2020, and the House of Representatives received the rule on June 29, 2020. See E-mail from Chief, Regulatory Coordination Division, USCIS, Office of Policy and Strategy, DHS, to Senior Staff Attorney, Appropriations Law Group, Office of General Counsel, GAO (Jun. 30, 2020, 6:30 PM EST). The rule has a stated effective date of

August 25, 2020. Therefore, the final rule does not have the required 60-day delay in its effective date.

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 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: Samantha Deshommes
Chief, Regulatory Coordination Division
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
“ASYLUM APPLICATION, INTERVIEW, AND
EMPLOYMENT AUTHORIZATION FOR APPLICANTS”
(RIN: 1615-AC27)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) conducted an economic analysis of this final rule. DHS estimated monetized costs and tax transfers associated with the rule over 10 years, 2020-2029. DHS estimated the 10-year present value cost to be \$12.8 billion for low wage earners, \$25.61 billion at the midpoint, and \$38.42 billion for upper wage earners, at the 3 percent discount rate. At the 7 percent discount rate, DHS estimated the 10-year present value cost to be \$10.54 billion for low wage earners, \$21.09 billion at the midpoint, and \$31.64 billion for upper wage earners. Regarding the annual average equivalence cost, DHS estimated the cost to be \$1.50 billion for low wage earners, \$3 billion at the midpoint, and \$4.50 billion for upper wage earners, at the 3 percent discount rate. At the 7 percent discount rate, DHS estimated the annual average equivalence cost to be \$1.50 billion for low wage earners, \$3 billion at the midpoint, and \$4.51 billion for upper wage earners. DHS estimated the tax transfers to be \$1.92 billion for low wage earners, \$3.87 billion at the midpoint, and \$5.82 billion for upper wage earners, at the 3 percent discount rate. At the 7 percent discount rate, DHS estimated tax transfers to be \$1.58 billion for low wage earners, \$3.19 billion at the midpoint, and \$4.79 billion for upper wage earners. Regarding the annual average equivalence for tax transfers, DHS estimated the cost to be \$0.23 billion for low wage earners, \$0.45 billion at the midpoint, and \$0.68 billion for upper wage earners, at the 3 percent and 7 percent discount rates. DHS determined it is not possible to monetize the benefits of this rule and thus DHS describes them qualitatively. According to DHS, this rule will reduce the incentives for aliens to file frivolous, fraudulent, or otherwise non-meritorious asylum applications intended primarily to obtain employment authorization, allowing aliens with *bona fide* asylum claims to be prioritized. DHS also stated that a streamlined system for employment authorizations for asylum seekers would reduce fraud and improve overall integrity and operational efficiency, thereby benefiting the U.S. Government and the public.

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

According to DHS, although this rule does not directly regulate or directly burden small entities, DHS is unable to identify the next best alternative to hiring a pending asylum applicant and is therefore unable to reliably estimate the potential indirect costs to small entities from this rule. DHS prepared a Final Regulatory Flexibility Analysis. The analysis included (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 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 which 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 the 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

According to DHS, because this rulemaking does not impose any federal mandates on state, local, or tribal governments, in the aggregate, or the private sector, this rulemaking does not contain a written statement, as required by the Act, assessing the effects on such entities. DHS indicated that this final rule will not have an effect on these entities of \$172 million (\$100 million, adjusted for inflation) or more.

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

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

On November 14, 2019, DHS published a notice of proposed rulemaking. 84 Fed. Reg. 62374. DHS received a total of 1,074 comment submissions in response to the proposed rule. DHS stated the majority of the comment submissions were from individual commenters. Other commenters, according to DHS, included anonymous commenters; advocacy groups; religious organizations; organizations providing direct legal, social, and medical services to aliens; attorneys; state and local governments; law firms; federal, state, and local elected officials; professional associations; research institutions and organizations; unions; and professional associations. DHS responded to comments in this final rule.

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

DHS determined that this final rule makes revisions to existing information collection requirements (ICRs). DHS is revising the “Application for Asylum and for Withholding of Removal” (Office of Management and Budget (OMB) Control Number 1615-0067). The total estimated annual burden associated with this ICR is 1,496,700 hours and \$46,968,000. DHS is revising the “Application for Employment Authorization” (OMB Control Number 1615-0040). The total estimated annual burden associated with this ICR is \$12,530,611 hours and \$732,362,554.

Statutory authorization for the rule

DHS promulgated this final rule pursuant to sections 1101, 1103, 1105a, 1158, 1226, 1252, 1282, and 1324a of title 8, United States Code; section 1806 of title 48, United States Code; title VII of Public Law 110–229; and Public Law 101–410, as amended by Public Law 114–74.

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

DHS determined that this final rule is economically significant under the Order and submitted it to OMB for review.

Executive Order No. 13,132 (Federalism)

DHS determined this 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 levels of government. DHS determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.