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B-334155

April 27, 2022

The Honorable Richard J. Durbin
Chairman
The Honorable Chuck Grassley
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; Department of Justice, Executive Office for Immigration Review: Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our amended report¹ on a major rule promulgated by the Department of Homeland Security (DHS) and the Department of Justice (DOJ) (together, the Departments) entitled “Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers” (RINs: 1615-AC67 and 1125-AB20). We received the rule on March 29, 2022. It was published in the *Federal Register* as an interim final rule (IFR) with request for comments on March 29, 2022. 87 Fed. Reg. 18078. The effective date of this IFR is May 31, 2022.

On August 20, 2021, the Departments published a notice of proposed rulemaking (NPRM or proposed rule) which they stated proposed amending regulations governing the procedures for determining certain protection claims and available parole procedures for individuals subject to expedited removal and found to have a credible fear of persecution or torture. 86 Fed. Reg. 46906. The Departments stated that after a careful review of the comments received, they are now issuing an IFR that responds to comments received in response to the NPRM and adopts the proposed rule with changes. The Departments also stated that the IFR, most significantly, provides that DHS’s United States Citizenship and Immigration Services (USCIS) will refer noncitizens whose applications are not granted to DOJ’s Executive Office for Immigration Review (EOIR) for streamlined removal proceedings. The Departments stated further that the

¹ Upon receipt of the additional documentation from the agency described below, we are issuing this amended report to revise a statement in the original report dated April 12, 2022, that the Departments did not comply with the 60-day delay in effective date requirement of 5 U.S.C. § 801(a)(3)(A).

IFR also establishes timelines for the consideration of applications for asylum and related protection by USCIS and, as needed, EOIR.

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 IFR was published in the *Federal Register* on March 29, 2022. 87 Fed. Reg. 18078. Notwithstanding an indication in the *Congressional Record* that the Senate received the rule on April 4, 2022 and the House received the rule on April 5, 2022, USCIS provided documentation showing that the rule was received by both the House and Senate on March 31, 2022. 168 Cong. Rec. S2090 (daily ed. Apr. 7, 2022); 168 Cong. Rec. H4509 (daily ed. Apr. 26, 2022); Email from Branch Chief, Regulatory Management Branch, USCIS, to Appropriations Law Support Branch, GAO (Apr. 14, 2022). The rule has a stated effective date of May 31, 2022. Therefore, based on USCIS's documentation, the final rule has the required 60-day delay in its effective date.

Enclosed is our assessment of the Departments' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the IFR. 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 IFR, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is fluid and cursive, with the first name "Shirley" being the most prominent part.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samantha Deshommes
Chief, Regulatory Coordination Division
USCIS Office of Policy & Strategy
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;
DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ENTITLED
“PROCEDURES FOR CREDIBLE FEAR SCREENING AND
CONSIDERATION OF ASYLUM, WITHHOLDING OF REMOVAL,
AND CAT PROTECTION CLAIMS BY ASYLUM OFFICERS”
(RINs: 1615-AC67 AND 1125-AB20)

(i) Cost-benefit analysis

The Department of Homeland Security and the Department of Justice (the Departments) conducted an economic analysis for this interim final rule (IFR). According to the Departments, there are some individuals that may benefit from filing cost savings, early labor market entry, faster completion of the asylum process, and less time in detention. The Departments stated that the IFR would also benefit their organizations as it would reduce the number of administrative adjudications and detention costs, and would result in increased administrative and operational efficiency, as well as the prompt removal of noncitizens that do not qualify for relief.

The Departments provided primary estimates of the annualized monetized costs for a 10-year period between 2021 and 2030. The Departments estimated the cost to be \$453.8 million at a three percent discount rate and \$451.2 million at a seven percent discount rate. The Departments also provided estimates of the annualized, but un-monetized, costs, which include: potential cost-savings applicable to Form I-589 of \$338.86 per person; potential cost-savings applicable to Form I-765 of \$377.32 per person; familiarization costs of about \$76.3 million (in 2022); and potential non-budgetary cost savings for the Departments.

The Departments stated potential transfers include a distributional economic impact in the form of a transfer to asylum applicants who enter the labor force earlier than they would currently if they take on work performed by others already in the U.S. workforce. The Departments also stated that there would be transfers to the government in the form of tax impacts. The Departments stated further that a portion of this tax payment might be transferred to asylum applicants from others who are currently in the U.S. labor force or eligible to work lawfully.

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

The Department of Homeland Security certified that this IFR would not have a significant economic impact on a substantial number of small entities. The Departments stated that the potential impact of this IFR on small entities was assessed in the proposed rulemaking associated with this IFR. 86 Fed. Reg. 46906 (Aug. 20, 2021).

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

The Departments stated that although this IFR is expected to exceed \$100 million in expenditures in any one year, when adjusted for inflation, the Departments do not believe this IFR would impose any unfunded federal mandates on state, local, or tribal governments, or on the private sector.

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

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

On August 20, 2021, the Departments published a proposed rule. 86 Fed. Reg. 46906. The Departments stated that they received 5,235 public comments. The Departments also stated that they summarized and responded to the public comments in the preamble of the IFR.

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

The Departments determined that this IFR contains information collection requirements under PRA. The information collection requirements concern Forms I-765 and I-765WS (Office of Management and Budget Control Number 1615-0040). According to the Departments, the total estimated annual hour burden associated with this collection of information is 11,881,376 hours, and the estimated total annual cost burden associated with this collection of information is \$400,895,820.

Statutory authorization for the rule

The Departments promulgated this IFR pursuant to section 301 of title 5; sections 111, 202, 251, 271, 521, 551 of title 6; various sections of title 8; sections 509, 510, and 1746 of title 28; sections 1806 and note, 1807, and 1808 of title 48, United States Code; Public Law 115-218; Public Law 112-54; sections 1506 and 1510 of Public Law 106-386; section 1505 of Public Law 106-554; sections 202 and 203 of Public Law 105-100; and section 902 of Public Law 105-277.

Executive Order No. 12866 (Regulatory Planning and Review)

The Departments stated that the Office of Management and Budget's Office of Information and Regulatory Affairs determined that this IFR is economically significant under the Order.

Executive Order No. 13132 (Federalism)

The Departments determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.