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Washington, DC 20548

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September 7, 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: Deferred Action for Childhood Arrivals*

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 "Deferred Action for Childhood Arrivals" (RIN: 1615-AC64). We received the rule on August 30, 2022. It was published in the *Federal Register* as a final rule on August 30, 2022. 87 Fed. Reg. 53152. The effective date is October 31, 2022.

According to DHS, the final rule establishes regulations meant to preserve and fortify the Deferred Action for Childhood Arrivals (DACA) policy. As provided in the rule, DACA defers the removal of certain noncitizens who years earlier came to the United States as children, meet other criteria, and do not present other circumstances that would warrant removal under immigration laws.

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".

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
“DEFERRED ACTION FOR CHILDHOOD ARRIVALS”
(RIN: 1615-AC64)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) conducted a cost-benefit analysis of the final rule relative to two baselines for measurement: (1) a No Action Baseline, which DHS described as modeling a state of the world in which the Deferred Action for Childhood Arrivals (DACA) policy continued uninterrupted following its establishment by then-Secretary of Homeland Security Janet Napolitano on June 15, 2012 (Napolitano Memorandum); and (2) a Pre-Guidance Baseline, which DHS described as modeling a state of the world in which the DACA policy never existed. Relative to the No Action Baseline, DHS estimated that the final rule presented no quantitative or monetized costs while providing qualitative benefits to DACA recipients and their family members due to increased security and reduced fear and anxiety. Relative to the Pre-Guidance Baseline, DHS estimated that the rule provided annualized net benefits of \$21.9 billion at a 3 percent discount rate or \$20.7 billion at a 7 percent discount rate, and that it created annualized costs of \$494.9 million at a 3 percent discount rate or \$480.8 million at a 7 percent discount rate. DHS also estimated, relative to the Pre-Guidance Baseline, that the rule created annualized employment-tax transfers of \$5.4 billion at a 3 percent discount rate or \$5.2 billion at a 7 percent discount rate.

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

DHS certified that the final rule would not have a significant economic impact on a substantial number of small entities. In this regard, DHS explained that the final rule does not regulate or have a direct effect on small entities and that it does not mandate any actions or requirements for small entities; rather, the rule regulates individuals.

(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 the requirements of the Act do not apply to this final rule. However, DHS stated that the rule would not impose any enforceable duty upon any non-federal government or private sector entity.

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

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

On September 28, 2021, DHS published a proposed rule. 86 Fed. Reg. 53736. DHS stated that it received 16,361 comments from a range of entities, including advocacy groups, schools and universities, legal services providers, religious organizations, businesses, professional organizations, state and local governments, federal and state elected officials, and unions. DHS

stated that it reviewed all public comments and that, in the final rule, it addressed comments related to the substance of the proposed rule.

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

DHS determined that the final rule contains information collection requirements (ICRs) under the Act. Specifically, DHS identified ICRs with the following United States Citizenship and Immigration Services (USCIS) Form Numbers and Office of Management and Budget (OMB) Control Numbers: USCIS Form Number I-821D (OMB Control Number 1615-0124), USCIS Form Numbers I-765 and I-765WS (OMB Control Number 1615-0040), and USCIS Form Number I-131 (OMB Control Number 1615-0013). With respect to Form Number I-821D, DHS estimated an annual time burden of 1,593,287 hours and an annual cost burden of \$42,758,430. With respect to Form Numbers I-765 and I-765WS, DHS estimated an annual time burden of 11,881,376 hours and an annual cost burden of \$400,895,820. Finally, with respect to Form Number I-131, DHS indicated that there was no material change to the currently approved ICR.

Statutory authorization for the rule

DHS promulgated the final rule pursuant to sections 301, 552, and 552a of title 5, United States Code, as well as sections 112(a)(2), 112(a)(3), 112(b)(1), 112(e), 202, 251, 279, and 291 of title 6, United States Code; sections 1101, 1103, 1105a, 1182, 1224, 1225, 1226, 1227, 1231, 1232, 1254a, 1254b, 1304, 1324a, 1356, 1357, 1362, and 1611 of title 8, United States Code; sections 4002 and 4013(c)(4) of title 18, United States Code; section 1806 of title 48, United States Code; and Public Laws 101-410, 107-609, 114-74, 115-218, and 116-159.

Executive Order No. 12866 (Regulatory Planning and Review)

DHS stated that the final rule is economically significant because it will have an estimated annual effect on the economy of \$100 million or more. DHS indicated that OMB has reviewed the rule.

Executive Order No. 13132 (Federalism)

DHS stated that the final rule will not have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.