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B-336180

April 11, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Social Security Administration: Omitting Food From In-Kind Support and Maintenance Calculations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Social Security Administration (SSA) entitled “Omitting Food From In-Kind Support and Maintenance Calculations” (RIN: 0960-AI60). We received the rule on March 27, 2024. It was published in the *Federal Register* as a final rule on March 27, 2024. 89 Fed. Reg. 21199. The effective date is September 30, 2024.

According to SSA, this final rule updates the Supplemental Security Income (SSI) regulations to remove food from the calculations of in-kind support and maintenance. SSA stated that the rule also adds conforming language to its definition of income. SSA explained that these changes simplify its rules by making them less cumbersome to administer and easier for the public to understand and follow, and they improve the equitable treatment of food assistance within the SSI program. Additionally, SSA stated that the rule includes other minor revisions to its regulations related to income, including clarifying its longstanding position that income may be received “constructively.”

Enclosed is our assessment of SSA’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: Jennifer Dulski
Regulations Writer
Social Security Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SOCIAL SECURITY ADMINISTRATION
ENTITLED
“OMITTING FOOD FROM IN-KIND SUPPORT AND MAINTENANCE CALCULATIONS”
(RIN: 0960-AI60)

(i) Cost-benefit analysis

The Social Security Administration (SSA) prepared a cost-benefit analysis for this final rule. SSA estimated that the rule will result in a total net administrative savings of \$26 million for the 10-year period from fiscal year (FY) 2024 to FY 2033. SSA also estimated that implementing the rule would increase federal Supplemental Security Income (SSI) payments by \$1.6 billion, in total, over the same period.

SSA stated that it anticipates qualitative benefits to come from the rule because the rule will simplify its policy and make the SSI claims process easier for applicants and recipients. According to SSA, the public benefits from simplifications to its program because it may take less time and effort to understand the program and its requirements and may make it easier to comply with the program's requirements. Also, SSA explained that because SSI applicants and recipients will not need to report as much information related to food expenses, they may save time that they otherwise would have spent gathering information and contacting SSA to report this information.

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

SSA certified that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals or states only.

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

SSA stated that this final rule will not impose unfunded federal mandates on state, local, and tribal governments, or the private sector.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the

OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, SSA confirmed that it conducted the requisite analysis related to the Act and submitted documentation to OMB. SSA determined that the requirements of the Act do not apply, and stated it, therefore, did not include statements in this final rule.

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

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

On February 15, 2023, SSA published a proposed rule. 88 Fed. Reg. 9779. SSA received 4,386 public comments in response to the proposed rule. Of these, 4,320 are available for public viewing at <https://www.regulations.gov/docket/SSA-2021-0014>. According to SSA, these comments were from individuals, advocacy groups for claimant representatives, and other advocacy groups. SSA stated that it carefully considered the public comments it received, and that more than 95 percent of the commenters supported the proposed rule. SSA noted that some commenters agreed with the overarching proposal in the proposed rule, but recommended amendments to it. SSA also noted that other commenters asked questions and offered opinions on the potential financial and legal implications of the proposed rule, and a few commenters disagreed with the proposed rule altogether. SSA summarized and responded to comments in this final rule.

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

SSA determined that this final rule contains information collection requirements under the Act. SSA stated that under the rule, it will no longer need to consider food expenses for in-kind support and maintenance calculations, so it is making minor changes to Forms SSA-8202-BK, Statement for Determining Continuing Eligibility for Supplemental Security Income Payment (OMB Control Number 0960-0145); SSA 8006, Statement of Living Arrangements, In-Kind Support and Maintenance (OMB Control Number 0960-0174); SSA-8000-BK, Application for Supplemental Security Income (OMB Control Number 0960-0229); SSA-8203-BK, Statement for Determining Continuing Eligibility for Supplemental Security Income Payment (OMB Control Number 0960-0416); SSA-8011, Statement of Household Expenses and Contributions (OMB Control Number 0960-0456); and SSA-5062 & SSA-L5063, Claimant Statement about Loan of Food or Shelter and Statement about Food or Shelter Provided to Another (OMB Control Number 0960-0529). According to SSA, the form changes will result in a burden reduction of one minute per response, for a total burden savings of 95,668 hours.

Statutory authorization for the rule

SSA promulgated this final rule pursuant to sections 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b, as well as the note to section 1382 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

SSA stated that it has consulted with OMB and that OMB determined that this final rule meets the criteria for a significant regulatory action under the Order and is subject to OMB review.

Executive Order No. 13132 (Federalism)

SSA determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment under the Order. SSA also determined that the rule will not preempt any state law or state regulation or affect the states' abilities to discharge traditional state governmental functions.