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Washington, DC 20548

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July 6, 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: Removal of 30-Day Processing Provision for
Asylum Applicant-Related Form I-765 Employment Authorization Applications*

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 "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications" (RIN: 1615-AC19). We received the rule on June 22, 2020. It was published in the *Federal Register* as a final rule on June 22, 2020. 85 Fed. Reg. 37502. The stated effective date of the rule is August 21, 2020.

The final rule removes a DHS regulatory provision stating that U.S. Citizenship and Immigration Services (USCIS) has 30 days from the date an asylum applicant files the initial Form I-765, Application for Employment Authorization (EAD application), to grant or deny that initial employment authorization application. This rule also removes a provision requiring that the application for renewal must be received by USCIS 90 days prior to the expiration of the employment authorization.

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 22, 2020. 85 Fed. Reg. 37502. The Senate received the rule on June 29, 2020, as is reflected in the *Congressional Record*. Although the *Congressional Record* did not reflect receipt by the House of Representatives, according to a DHS official, DHS received mail confirmation of delivery 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 21, 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, reading "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
“REMOVAL OF 30-DAY PROCESSING PROVISION FOR
ASYLUM APPLICANT-RELATED FORM I-765 EMPLOYMENT
AUTHORIZATION APPLICATIONS”
(RIN: 1615-AC19)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) conducted an economic analysis of this final rule. For costs and transfers associated with this final rule, DHS provided primary and maximum estimates. Regarding costs, at the 3 and 7 percent discount rates, the primary estimate for annualized, monetized costs is \$387.38 million and the maximum estimate is \$774.76 million. DHS also provided unquantified costs. According to DHS, in cases where companies cannot find reasonable substitutes for the labor the asylum applicants would have provided, affected companies would also lose profits from the lost productivity. In all cases, according to DHS, companies would incur opportunity costs by having to choose the next best alternative to immediately filling the job the pending asylum applicant would have filled. DHS determined there may be additional opportunity costs to employers such as additional search costs.

Regarding transfers, at the 3 and 7 percent discount rates, the primary estimate for compensation transfers is \$387.38 million and the maximum estimate is \$774.76 million. DHS determined that these compensation transfers would be from asylum applicants to workers in the U.S. labor force or induced into the U.S. labor force. DHS estimates additional distributional impacts from asylum applicant to the asylum applicant's support network that provides for the asylum applicant while awaiting an Application for Employment Authorization (EAD application). Regarding tax-related transfers, at the 3 and 7 percent discount rates, the primary estimate is \$59.27 million and the maximum estimate is \$118.54 million. DHS explained that there would be a reduction in employment taxes from companies and employees to the federal government. According to DHS, there could also be a transfer of federal, state, and local income tax revenue.

Regarding benefits, DHS did not record any quantifiable benefits. Regarding non-quantifiable benefits, DHS stated that applicants would benefit from reduced confusion over renewal requirements. DHS also stated that it would be able to operate under sustainable case processing times for initial EAD applications for pending asylum applicants, to allow sufficient time to address national security and fraud concerns, and to maintain technological advances in document production and identity verification.

(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. 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 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 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 that 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 indicated that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, 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 September 9, 2019, DHS published a proposed rule. 84 Fed. Reg. 47148. According to DHS, it received over 3,200 comments during the public comment period. DHS stated that it reviewed the public comments received in response to the proposed rule and addresses relevant comments in the preamble to the final rule, grouped by subject area.

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

DHS determined that this rule does not impose any reporting or recordkeeping requirements under PRA.

Statutory authorization for the rule

DHS promulgated this final rule pursuant to sections 1101, 1103, 1158, 1226, 1252, and 1282 of title 8, United States Code, and title VII of Public Law 110–229.

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

DHS determined that this final rule is economically significant under the Order and, according to DHS, the Office of Management and Budget has reviewed the rule.

Executive Order No. 13,132 (Federalism)

DHS determined that this rule would 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.