



441 G St. N.W.
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September 15, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, and Labor
United States Senate

The Honorable Robert C. "Bobby" Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Health and Human Services, Administration for Children and Families:
Head Start Designation Renewal System*

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 Health and Human Services (HHS), Administration for Children and Families (ACF) entitled "Head Start Designation Renewal System" (RIN: 0970-AC77). We received the rule on August 31, 2020. It was published in the *Federal Register* as a final rule on August 28, 2020. 85 Fed. Reg. 53189. The stated effective date of the rule is October 27, 2020.

According to ACF, this final rule refines how the Office of Head Start uses deficiencies, Classroom Assessment Scoring System: Pre-K (CLASS®) scores, and audit findings for designation renewal. ACF states that the rule also streamlines and updates the regulatory provisions on designation renewal to make them easier to understand.

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). This final rule was published in the *Federal Register* on August 28, 2020. 85 Fed. Reg. 53189. The Senate received the rule on September 2, 2020. 166 Cong. Rec. S5549 (daily ed. Sept. 10, 2020). The House of Representatives received the rule on September 8, 2020. 166 Cong. Rec. H4380 (daily ed. Sept. 14, 2020). The rule has a stated effective date of October 27, 2020. Therefore the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of ACF'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 style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa Jones
Deputy Director, ODRM
Department of Health and Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
ADMINISTRATION FOR CHILDREN AND FAMILIES
ENTITLED
“HEAD START DESIGNATION RENEWAL SYSTEM”
(RIN: 0970-AC77)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF) estimates the quantifiable costs of implementation of this final rule for the subset of grantees that would be required to compete in any year to be well under \$1 million, including the total estimated cost for grantees to complete competitive applications at \$247,760 per year (400 grantees across 5 years with an average of 80 grantees per year at \$3,097 each). ACF states that this cost of competition would decrease in this final rule because fewer grantees would be required to compete.

ACF estimates that the effect of this rule is to reallocate approximately \$297 to \$392 million from new potential grantees to existing grantees, with this amount being reached in the fifth year after rule finalization after a roughly linear increase in the preceding years. ACF identifies a non-quantified opportunity cost for this rule as fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community. According to ACF, however, there is an added benefit to this cost of existing grantees being able to focus on the cost of quality improvement rather than the cost of competition. ACF also states there are non-quantifiable costs to fewer resources going to domains where a grantee already excels while other resources go to domains needing improvement, which also has the added benefit of more data-driven and effective use of existing resources. According to ACF, the rule has the added benefits of removing the stress caused by the lowest 10 percent criterion of the Classroom Assessment Scoring System: Pre-K (CLASS®) condition and reducing the fear expressed by grantees that one mishap of an individual could require their entire program to compete. Although there is an overall estimated decrease of competition, ACF estimates more grantees will compete due to the fiscal condition, which will result in an additional cost for those subset of grantees. According to ACF, an anticipated benefit of this cost is competing grantees before known fiscal challenges escalate to a crisis point, which could prevent potential termination or relinquishment of the grant.

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

The Secretary of HHS certifies that this rule will not have a significant impact on a substantial number of small entities.

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

ACF determined that this final rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of \$154 million (\$100 million, adjusted for inflation).

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

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

On August 13, 2019, ACF published a proposed rule. 84 Fed. Reg. 39996. ACF received 63 comments from Head Start grantees, teachers, other staff, large early childhood associations, advocacy organizations, early childhood vendors, Members of Congress, Indian tribes, child development and policy experts, CLASS experts, and parents. ACF responded to comments in this final rule.

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

ACF determined that this final rule changes the burden of an existing information collection under the Act. According to ACF, the rule increases the burden of the information collection entitled “Head Start Program Performance Standards” (Office of Management and Budget control number 0970-0148) by 4,600 total annual burden hours.

Statutory authorization for the rule

ACF promulgated this final rule pursuant to sections 9836(a), 9836(c), and 9839(c) of title 42, United States Code.

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

ACF determined that this final rule would result in no more than *de minimis* costs.

Executive Order No. 13,132 (Federalism)

ACF determined that this final rule will not have substantial direct impact 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, and, therefore, does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.