



441 G St. N.W.  
Washington, DC 20548

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October 21, 2020

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
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 Labor, Employment and Training Administration: Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*

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 Labor, Employment and Training Administration (ETA) entitled "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States" (RIN: 1205-AC00). We received the rule on October 8, 2020. It was published in the *Federal Register* as an interim final rule; request for comments on October 8, 2020. 85 Fed. Reg. 63872. The interim final rule has an effective date of October 8, 2020, but the agency is holding a comment period ending on November 9, 2020.

According to ETA, the interim final rule amends its regulations governing permanent labor certifications and Labor Condition Applications (LCAs) to incorporate changes to the computation of wage levels under the four-tiered wage structure based on the Occupational Employment Statistics (OES) wage survey administered by the Bureau of Labor Statistics (BLS). ETA stated the primary purpose of these changes is to update the computation of prevailing wage levels under the existing four-tier wage structure to better reflect the actual wages earned by U.S. workers similarly employed to foreign workers. ETA further stated this update will allow it to more effectively ensure that the employment of immigrant and nonimmigrant workers admitted or otherwise provided status through the above-referenced programs does not adversely affect the wages and job opportunities of U.S. workers.

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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its

reasons in the rule issued. 5 U.S.C. § 808(2). ETA determined it had good cause to forego notice and public procedure because the shock to the labor market caused by the widespread unemployment resulting from the coronavirus public health emergency has created exigent circumstances that threaten immediate harm to the wages and job prospects of U.S. workers. Also, according to ETA, even absent the emergency labor market conditions caused by the coronavirus pandemic, providing the public an opportunity to comment before the adjustments to the wage levels take effect is contrary to the public interest insofar as it would impede the ETA's ability to solve the problems this interim final rule is meant to address. The agency stated advance notice of the intended changes would create an opportunity, and the incentives to use it, for employers to attempt to evade the adjusted wage requirements.

Enclosed is our assessment of ETA'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 cursive script that reads "Shirley A. Jones".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Sheeril Hurd  
Supervisor, Regulations and Dissemination,  
OPDR, ETA  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF LABOR,  
EMPLOYMENT AND TRAINING ADMINISTRATION  
ENTITLED  
“STRENGTHENING WAGE PROTECTIONS FOR THE  
TEMPORARY AND PERMANENT EMPLOYMENT OF  
CERTAIN ALIENS IN THE UNITED STATES”  
(RIN: 1205-AC00)

(i) Cost-benefit analysis

The Department of Labor, Employment and Training Administration (ETA) stated the interim final rule will result in costs and transfer payments. ETA estimated the interim final rule will have an annualized cost of \$3.06 million and a total 10-year cost of \$21.51 million at a discount rate of 7 percent in 2019 dollars. ETA further estimated the interim final rule will result in annualized transfer payments of \$23.5 billion and total 10-year transfer payments of \$165.1 billion at a discount rate of 7 percent in 2019 dollars. ETA did not estimate any cost savings.

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

ETA prepared an Initial Regulatory Flexibility Analysis. The analysis included (1) a statement of why ETA is considering the action; (2) the objectives of and the legal basis for the interim final rule; (3) an estimate of the number of small entities affected by the interim final rule; (4) a summary of the compliance requirements of the interim final rule including reporting and recordkeeping; (5) a calculation of the interim final rule's impact on small entities; (6) a summary of relevant federal rules duplicating, overlapping, or conflicting with the interim final rule; and (7) a description of alternatives to the interim final rule.

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

ETA determined the interim final rule does not contain a mandate subject to the Act, and thus the Act's provisions did not apply to the interim final rule.

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

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

ETA waived notice and comment procedures for good cause. ETA determined it had good cause because the shock to the labor market caused by the widespread unemployment resulting from the coronavirus public health emergency has created exigent circumstances that threaten immediate harm to the wages and job prospects of U.S. workers. Also, according to ETA, even absent the emergency labor market conditions caused by the coronavirus pandemic, providing the public an opportunity to comment before the adjustments to the wage levels take effect is contrary to the public interest insofar as it would impede ETA's ability to solve the problems this interim final rule is meant to address. The agency stated advance notice of the

intended changes would create an opportunity, and the incentives to use it, for employers to attempt to evade the adjusted wage requirements.

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

ETA determined the interim final rule does not contain any information collection subject to the Act.

Statutory authorization for the rule

ETA promulgated the interim final rule pursuant to sections 1101, 1101 note, 1103, 1182, 1182 note, 1184, 1184 note, 1188, and 1288 of title 8; section 2461 note of title 28; section 49k of title 29; and section 1806 of title 48, United States Code, as well as Public Law 107–296, Public Law 109–423, and Public Law 114–74.

Executive Order No. 12866 (Regulatory Planning and Review)

ETA stated the Office of Management and Budget reviewed the interim final rule and determined it was economically significant.

Executive Order No. 13132 (Federalism)

ETA determined the final rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Because of this, ETA stated the interim final rule does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.