

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

B-333474

August 10, 2021

The Honorable Patty Murray  
Chair  
The Honorable Richard Burr  
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, Wage and Hour Division: Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule*

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, Wage and Hour Division (Department) entitled "Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule (RIN: 1235-AA37). We received the rule on July 30, 2021. It was published in the *Federal Register* as a final rule, rescission, on July 30, 2021. 86 Fed. Reg. 40939. The effective date is September 28, 2021.

According to the Department, the final rule finalizes the Department's proposal to rescind the final rule titled "Joint Employer Status Under the Fair Labor Standards Act," which was published on January 16, 2020, and took effect on March 16, 2020. 85 Fed. Reg. 2820. The Department stated the final rule removes the regulations established by the earlier rule.

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 Department informed us the House of Representatives received the final rule on August 2, 2021, and that the Senate received it on August 6, 2021. Email from Compliance Specialist, Department to Senior Staff Attorney, GAO (Aug. 6, 2021). The final rule was published on July 30, 2021. 86 Fed. Reg. 40939. The final rule has a stated effective date of September 28, 2021. Therefore the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the Department'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, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Robert Waterman  
Compliance Specialist  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF LABOR,  
WAGE AND HOUR DIVISION  
ENTITLED  
“RESCISSION OF JOINT EMPLOYER STATUS UNDER THE  
FAIR LABOR STANDARDS ACT RULE”  
(RIN: 1235-AA37)

(i) Cost-benefit analysis

The Department of Labor, Wage and Hour Division (Department) estimated the final rule will impose direct costs on businesses that will need to review the final rule. The Department estimated these costs would have a lower bound of \$52,728,043, and an upper bound of \$69,115,369. The Department expects the final rule will not result in substantial costs or decreased clarity for the regulated community. The Department further estimated the final rule will not change the amount of wages due any employee under the Fair Labor Standards Act. However, the Department stated that rescinding the Joint Employer Rule could result in a transfer from employers to employees in the form of back wages owed that employees would thereafter be able to collect. The Department also estimated that rescinding the Joint Employer Rule will result in benefits to workers and will strengthen wage and hour protections for vulnerable workers.

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

The Department certified the final rule would not have a significant economic 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

The Department has determined that a full macroeconomic analysis is not likely to show that these costs of the final rule would have any measurable effect under the Act.

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

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

On March 12, 2021, the Department published a proposed rule. 86 Fed. Reg. 14038. The Department received over 290 comments in response to the proposed rule from state officials, Members of Congress, labor unions, social justice organizations, worker advocacy groups, and individual commenters. The Department responded to the comments in the final rule.

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

The Department determined the final rule does not contain any information collection requirements subject to the Act.

Statutory authorization for the rule

The Department promulgated the final rule pursuant to sections 201–219 of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Department stated the Office of Management and Budget reviewed the rule and determined it was economically significant.

Executive Order No. 13132 (Federalism)

The Department determined the final rule will 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.