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February 15, 2024

The Honorable Richard J. Durbin
Chairman
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*

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), U.S. Citizenship and Immigration Services (USCIS), titled "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" (RIN: 1615-AC68). We received the rule on January 31, 2024. It was published in the *Federal Register* as a final rule on January 31, 2024. 89 Fed. Reg. 6194. The effective date is April 1, 2024.

According to DHS, this final rule adjusts certain immigration and naturalization benefit request fees charged by USCIS. DHS stated that the final rule also provides additional fee exemptions for certain humanitarian categories and makes changes to certain other immigration benefit request requirements. DHS also stated that USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full cost of providing adjudication and naturalization services. DHS stated further that it is adjusting the fee schedule to fully recover costs and maintain adequate service. Lastly, DHS stated that this final rule also responds to public comments received on the USCIS proposed fee schedule published on January 4, 2023.

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.

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Enclosure

cc: Samantha Deshommes
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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
TITLED
“U.S. CITIZENSHIP AND IMMIGRATION SERVICES FEE SCHEDULE AND CHANGES
TO CERTAIN OTHER IMMIGRATION BENEFIT REQUEST REQUIREMENTS”
(RIN: 1615-AC68)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) prepared an accounting statement for this final rule. DHS stated that the changes in the final rule will provide several benefits to DHS and applicants/petitioners seeking immigration benefits. DHS noted, for example, that the changes imposed by the final rule will allow for the government to provide better aligned fees and publish timely fee adjustments that insure the real value of fee revenue dollars against future inflation. DHS also stated that the primary benefits to applicants/petitioners include, for example, the reduction or elimination of some fees, reduced fee burdens, and the expansion of the electronic filing system. According to DHS, the total annualized monetized cost, in 2022 dollars, imposed by the final rule is \$157 million at both a 3 percent and 7 percent discount rate, over a 10-year period. DHS estimates the annualized monetized transfers from the applicants/petitioners to USCIS to be \$888 million at both a 3 percent and 7 percent discount rate. DHS also estimates the annualized monetized transfers from USCIS to applicants/petitioners to be \$241 million at both a 3 percent and 7 percent discount rate. Lastly, DHS estimates the annualized monetized transfers from the U.S. Department of Defense to USCIS to be \$200,000 at both a 3 percent and 7 percent discount rate.

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

Based on the data DHS has about certain forms, DHS stated that it does not believe the increase in fees implemented by this final rule will have a significant economic impact on a substantial number of small entities. DHS also stated that it does not have enough data to determine whether increased fees for other forms will have a significant impact on a substantial number of small entities. DHS prepared a Final Regulatory Flexibility Analysis. The analysis includes (1) a statement of the need for and objectives of the rule; (2) a statement of significant issues raised by 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 proposed rule because of such comments; (3) a response by 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 based on 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 which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (6) a description of the steps the agency has taken to minimize 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 which 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 determined that this final rule does not contain a federal mandate as the term is defined under Act. Thus, according to DHS, the Act does not apply, and DHS stated that it did not prepare a statement under the Act.

(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, DHS stated that OMB has reviewed its determination that the Act does not apply to this final rule because the final rule does not increase direct spending beyond the applicable thresholds.

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

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

On January 4, 2023, DHS issued a proposed rule. 88 Fed. Reg. 402. DHS stated that USCIS also held a public engagement event on January 11, 2023, and a software demonstration on March 1, 2023, to provide additional avenues for the interested public to hear about and provide feedback on the proposed fee rule. DHS also stated that it received 7,973 public comment submissions. DHS stated further that most submissions were anonymous or from individuals, schools or universities, advocacy groups, lawyers or law firms, legal assistance providers, community or social organizations, businesses, state and federal elected officials, research organizations, religious organizations, local governments or tribes, unions, and business or trade associations. DHS noted that it reviewed all the public comments received in response to the proposed rule and addressed relevant comments in the final rule.

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

DHS determined that this final rule contains information collection requirements (ICRs) under the Act. DHS provided a table listing 53 information collections that are associated with the final rule. DHS stated that the final rule requires additional changes to certain ICRs to collect the information necessary to determine fees, fee waivers, and fee exemptions. These ICRs include: I-129, Petition for a Nonimmigrant Worker (OMB Control Number 1615-0009); I-129CW, Petition for Commonwealth of the Northern Mariana Islands—Only Nonimmigrant Transitional Worker and I-129CWR, Semiannual Report for CW-1 Worker (OMB Control Number 1615-0111); I-140, Immigrant Petition for Alien Worker (OMB Control Number 1615-0015); I-600, Petition to Classify Orphan as an Immediate Relative, I-600A, Application for Advance Processing of an Orphan Petition, I-600/A Supp 1, Form I-600A/I-600 Supplement 1, Listing of Adult Member of the Household, I-600/A Supp 2, Form I-600A/I-600 Supplement 2, Consent to Disclose Information, and I-600/A Supp 3, Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600 (OMB Control Number 1615-0028); and I-912, Application for Fee Waiver (OMB Control Number 1615-0116).

Statutory authorization for the rule

DHS promulgated this final rule pursuant to sections 301, 552, and 552a of title 5; sections 101 note, 111, 202, 236, and 271 of title 6; sections 1101, 1101 note, 1102, 1103, 1151, 1153, 1154, 1182, 1182 note, 1184, 1185 note, 1186a, 1187, 1201, 1221, 1223, 1224, 1225, 1226, 1227, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1254a, 1254a note, 1254b, 1255, 1255a, 1255a note, 1281, 1282, 1301–1305, 1324a, 1356, 1356b, 1357, 1359, 1362, 1372, and 1641 of title 8; section 2461 note of title 28; section 9701 of title 31, and sections 1806, 1901 note, and 1931 note of title 48, United States Code; Public Law 104-208; Public Law 105-100; Public Law 105-277; Public Law 106-386, Public Law 107-609; Public Law 107-296; Public Law 110-229; Public Law 115-218; and Public Law 116-159.

Executive Order No. 12866 (Regulatory Planning and Review)

DHS stated that OMB has reviewed this final rule and designated the rule a “significant regulatory action” as defined under the Order, as amended, because its annual effects on the economy exceed \$200 million in any year of the analysis.

Executive Order No. 13132 (Federalism)

DHS determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.