



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

B-336620

September 5, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of Health and Human Services, Administration for Children and Families: Supporting the Head Start Workforce and Consistent Quality Programming*

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 “Supporting the Head Start Workforce and Consistent Quality Programming” (RIN: 0970-AD01). We received the rule on August 2, 2024. It was published in the *Federal Register* as a final rule on August 21, 2024. 89 Fed. Reg. 67720. The effective date of the rule is August 21, 2024.

According to ACF, this final rule makes regulatory changes to the Head Start Program Performance Standards to support and stabilize the Head Start workforce and improve the quality of services Head Start programs provide to children and families. ACF stated that these changes include requirements for wages and benefits, breaks for staff, and enhanced support for staff health and wellness. The changes also include enhancements to mental health services to better integrate mental health into every aspect of program service delivery. Additionally, ACF stated that the changes include minor clarifications to promote better transparency and clarity of understanding for grant recipients.

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 rule was received by the House of Representatives on August 2, 2024. 170 Cong. Rec. H4989 (daily ed. Aug. 13, 2024). The *Congressional Record* does not yet reflect the date of receipt by the Senate; however, HHS provided documentation showing the Senate received the rule on August 2, 2024. Email from HHS to GAO, *Subject: Official Submission - RIN 0970-AD01* (Aug. 2, 2024). The rule was published in the *Federal Register* on August 21, 2024. 89 Fed. Reg. 67720. The rule has a stated effective date of August 21, 2024. However, ACF stated that the final rule has a

compliance date of October 21, 2024. 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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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: Calvin E. Dukes II  
Regulations Coordinator  
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  
“SUPPORTING THE HEAD START WORKFORCE  
AND CONSISTENT QUALITY PROGRAMMING”  
(RIN: 0970-AD01)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF) conducted an economic analysis of this final rule. ACF estimated that in 2031, when all of the rule’s policies are in effect, the rule will require an increase in expenditures of about \$2.3 billion. ACF stated that the expenditures will result from full implementation of the rule’s policies for wages and benefits, mental health support, and other quality improvements. ACF also discussed the potential benefits of the rule, including improved staff retention, which promotes stable staffing across the program and provides continuity of services for enrolled children. Additionally, ACF stated that a strong and stable early childhood workforce can lead to improved child behavior and stronger social competence.

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

ACF determined that this final rule will have a significant economic impact on a substantial number of small entities. ACF stated that it aimed to minimize this impact to some small entities by providing additional flexibility for the new wages and benefits policies for Head Start agencies with 200 or fewer funded slots. Specifically, ACF stated that small agencies with 200 or fewer funded slots must have a wage or salary scale and must demonstrate measurable progress over time in improving wages, but are not required to meet other wage and benefit requirements that apply to larger programs.

(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 will not likely have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(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.

ACF did not discuss the Act in this final rule or in its submission to us.

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

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

On November 20, 2023, ACF published a proposed rule. 88 Fed. Reg. 80818. During the public comment period, ACF engaged with the Head Start community through a series of round table discussions in multiple locations and virtually. ACF received 1,300 public comments, 1,133 of which were unique, from Head Start programs; national, regional, and state Head Start associations; groups representing community action agencies; labor unions; early childhood researchers and research organizations; individual Head Start staff and families; individual members of the public; and members of the U.S. Congress. In this final rule, ACF described changes made in response to the public comments.

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

ACF determined that this final rule contains new recordkeeping requirements under PRA as well as changes to existing information collections associated with OMB Control Number 0970-0148. ACF estimated that the additional burden hours to be added to the existing information collection would be 71,371 total burden hours.

Statutory authorization for the rule

ACF promulgated this final rule pursuant to sections 9835, 9836a, 9839(c), 9840a, 9843a, and 9848 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

ACF determined that this final rule is significant and stated that the Regulatory Impact Analysis for the rule identifies economic impacts that exceed the threshold for significance under section 3(f)(1) of the Order.

Executive Order No. 13132 (Federalism)

ACF determined that this final rule will not have a 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.