



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

B-336893

December 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: Increase Flexibility for Tribes in Child Care and Development Fund (CCDF) Eligibility*

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) entitled “Increase Flexibility for Tribes in Child Care and Development Fund (CCDF) Eligibility” (RIN: 0970-AD11). We received the rule on November 22, 2024. It was published in the *Federal Register* on November 18, 2024. 89 Fed. Reg. 90605. The stated effective date of the rule is November 18, 2024.

According to HHS, this rule amends the Child Care and Development Fund (CCDF) regulations to provide all Indian Tribes and Tribal Organizations operating CCDF programs the flexibility, at their discretion, to establish and use eligibility criteria regardless of family income or assets. HHS stated that the rule provides Tribal Nations with more flexibility to better meet community needs, responds to calls for greater Tribal sovereignty and self-determination, and facilitates better alignment between Tribal CCDF and American Indian and Alaska Native Head Start programs.

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 published in the *Federal Register* on November 18, 2024. 89 Fed. Reg. 90605. The House of Representatives received the rule on November 20, 2024. 170 Cong. Rec. H6200 (daily ed. Nov. 26, 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 November 20, 2024. Email from HHS to GAO, *Subject: Official Submission - RIN 0970-AD11* (Nov. 21, 2024). The stated effective date of the rule is November 18, 2024. Therefore, the stated effective date is less than 60 days from the date of receipt of the rule by Congress.

Enclosed is our assessment of HHS'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
ENTITLED
“INCREASE FLEXIBILITY FOR TRIBES IN CHILD CARE
AND DEVELOPMENT FUND (CCDF) ELIGIBILITY”
(RIN: 0970-AD11)

(i) Cost-benefit analysis

In its submission to us, the Department of Health and Human Services (HHS) indicated that it did not prepare an analysis of the costs and benefits of this rule.

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

HHS stated that the Secretary of HHS has certified that this rule will not result in a significant impact on a substantial number of small entities, as the rule primarily impacts tribes receiving federal Child Care and Development Fund (CCDF) grants. HHS also stated that a regulatory flexibility analysis is not required. 89 Fed. Reg. 90607 (Nov. 18, 2024).

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

HHS determined that this rule does not impose an unfunded mandate on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 89 Fed. Reg. 90607.

(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.

HHS did not discuss the Act in this rule. In its submission to us, HHS indicated the Act is not applicable to the rule.

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

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

On July 16, 2024, HHS published a proposed rule. 89 Fed. Reg. 57835. HHS stated that it received 18 comments from Tribal Nations and Tribal organizations, a state CCDF Lead Agency, non-profit and research organizations, parents, and individual members of the public. 89 Fed. Reg. 90606. HHS responded to comments in this rule.

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

HHS determined that this rule modifies information collection requirements previously approved under OMB Control Number 0970-0198. HHS stated that it will submit all revised data collection requirements to OMB for review and approval. 89 Fed. Reg. 90607.

Statutory authorization for the rule

HHS promulgated this rule under the authority granted to the Secretary of HHS by the Child Care and Development Block Grant Act of 1990, *as amended by* 42 U.S.C. §§ 9857 *et seq.*, and section 418 of the Social Security Act, 42 U.S.C. § 618.

Executive Order No. 12866 (Regulatory Planning and Review)

HHS stated that this rule is significant under the Order. See 89 Fed. Reg. 90608.

Executive Order No. 13132 (Federalism)

HHS determined that this rule does not have federalism implications. See 89 Fed. Reg. 90608.