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August 18, 2020

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
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) entitled “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” (RIN: 1615-AC18). We received the rule on August 3, 2020. It was published in the *Federal Register* as a final rule on August 3, 2020. 85 Fed. Reg. 46788. The effective date of the rule is October 2, 2020.

According to DHS, the final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). The rule also removes certain fee exemptions, changes fee waiver requirements, alters premium processing time limits, and modifies intercountry adoption processing. DHS states 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. Therefore, DHS is adjusting USCIS fees by a weighted average increase of 20 percent, adding new fees for certain immigration benefit requests, establishing multiple fees for nonimmigrant worker petitions, and limiting the number of beneficiaries for certain forms. According to DHS, the rule is intended to ensure that USCIS has the resources it needs to provide adequate service to applicants and petitioners.

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.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samantha Deshommnes
Chief, Regulatory Coordination Division
Office of Policy and Strategy, USCIS
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
ENTITLED
“U.S. CITIZENSHIP AND IMMIGRATION SERVICES
FEE SCHEDULE AND CHANGES TO CERTAIN OTHER
IMMIGRATION BENEFIT REQUEST REQUIREMENTS”
(RIN: 1615-AC18)

(i) Cost-benefit analysis

According to the Department of Homeland Security (DHS), this final rule adjusts certain immigration and naturalization benefit request fees charged by the U.S. Citizenship and Immigration Services (USCIS), while also removing certain fee exemptions, changing fee waiver requirements, altering premium processing time limits, and modifying intercountry adoption processing. For the 10-year implementation period of the rule, DHS estimates the annualized costs of the rule to be \$13,856,291, annualized at either 3 percent or 7 percent discount rates. DHS estimates the annualized cost savings to be \$6,192,201 to \$22,546,053. DHS estimates the annualized net societal costs and savings of the rule to range from costs of \$7,664,090 to savings of \$8,689,762. Over the 10-year implementation period of the rule, DHS estimates the annualized transfers to the government from applicants/petitioners to be \$551,842,481, annualized at either 3 percent or 7 percent discount rates. Over the same 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule between different groups of fee-paying applicants and petitioners to specific form populations is \$832,239,426, annualized at either 3 percent or 7 percent discount rates. DHS states that its final revenue increase is based on USCIS costs and volume projections available at the time of the USCIS fee review.

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

DHS prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule; (2) a statement of significant issues raised by public comments, including assessment of those issues and changes made as result of the comments; (3) the agency response to any comments filed by the Chief Counsel for Advocacy in the Small Business Administration; (4) a description of the small entities subject to the rule; (5) a description of the projected reporting, recordkeeping, and other compliance requirements; and (6) a description of agency actions to minimize effects on small entities.

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

DHS states that, while this final rule may result in expenditure of more than \$100 million by the private sector annually, the rulemaking is not a “federal mandate” as defined for the purposes of the Unfunded Mandates Reform Act. According to DHS, the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary federal program, applying for immigration status in the United States. DHS states the requirements of the Act therefore do not apply to this final rule and it has not prepared a statement 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 November 14, 2019, DHS published a proposed rule. 84 Fed. Reg. 62280. DHS received 43,108 public comments from individual and anonymous commenters; healthcare providers; research institutes and universities; law firms and individual attorneys; federal, state, local, and tribal elected officials; state and local government agencies; religious and community organizations; advocacy groups; unions; and trade and business organizations. DHS states that it reviewed all of the comments and responded to relevant comments in this final rule, grouped by subject area.

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

DHS determined that this final rule contains information collection requirements under the Act. DHS states that it is making non-substantive edits to various USCIS forms and has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83-C, and amended information collection instruments to the Office of Management and Budget (OMB) for review and approval. DHS has identified revisions of seven currently approved information collections associated with various USCIS forms and states that it has submitted to OMB requests for approval of revised information collection requests (ICR) under OMB control numbers (1615-0009, 1615-0013, 1615-0028, 1615-0040, 1615-0067, 1615-0116, and 1615-0135). DHS also states that it identified six new information collections associated with various USCIS forms, for which it has submitted ICRs under OMB control numbers (1615-0145, 1615-0146, 1615-0147, 1615-0148, 1615-0149, and 1615-0150). DHS provided the estimated burden of each ICR.

Statutory authorization for the rule

DHS promulgated this final rule pursuant to section 112 of title 6 and sections 1103 and 1356(m) of title 8, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

DHS designated this final rule as economically significant under the Order and states that it has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

DHS determined that this final rule does not have federalism implications because it does 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.