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April 26, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Jason Smith
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Social Security Administration: Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Social Security Administration (SSA) entitled “Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients” (RIN: 0960-AI82). We received the rule on April 11, 2024. It was published in the *Federal Register* as a final rule on April 11, 2024. 89 Fed. Reg. 25507. The effective date is September 30, 2024.

According to SSA, this final rule applies nationwide, the in-kind support and maintenance (ISM) rental subsidy exception that has until now been available only for SSI applicants and recipients residing in seven states. SSA explained the rule provides that a “business arrangement” exists, such that the SSI applicant or recipient is not considered to be receiving ISM in the form of room or rent, when the amount of monthly required rent for the property equals or exceeds the presumed maximum value.

Enclosed is our assessment of SSA’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.

Shirley A. Jones
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Enclosure

cc: Edward Sosar
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REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SOCIAL SECURITY ADMINISTRATION
ENTITLED
“EXPANSION OF THE RENTAL SUBSIDY POLICY
FOR SUPPLEMENTAL SECURITY INCOME (SSI) APPLICANTS AND RECIPIENTS”
(RIN: 0960-A182)

(i) Cost-benefit analysis

The Social Security Administration (SSA) discussed the costs and benefits of this final rule. In terms of anticipated transfers, SSA estimated that implementation of the rule would result in a total increase in federal Supplemental Security Income (SSI) payments of \$837 million over fiscal years (FYs) 2024 through 2033, assuming implementation of the rule on September 30, 2024. According to SSA, these transfers reflect an estimation that approximately 41,000 individuals who would be eligible under current rules will have their federal SSI payment increased by an average of \$132 per month in 2024. SSA stated that there would also be an annual average of an additional 14,000 individuals from FYs 2024 through 2033 who are not eligible under current rules who would be newly eligible and would receive payments under the rule.

In terms of the anticipated net administrative cost savings to SSA, the agency estimated that the rule will result in net administrative savings of \$10 million for the 10-year period from FY 2024 to FY 2033. SSA explained that the net administrative savings are mainly a result of unit time savings, as field office employees will not have to spend time developing current market rental value for all rental subsidy calculations during initial claims, pre-effectuation reviews, redeterminations, and post-eligibility actions. According to SSA, the savings are offset by costs to update SSA's systems, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs because of more individuals being eligible for SSI benefits, which increases claims, reconsiderations, appeals, redeterminations, and post-eligibility actions.

In terms of the anticipated time-savings and qualitative benefits to the public, SSA noted that it expects the rule to generate the following qualitative benefits: saving time and effort for claimants and third parties who may have evidence related to a claimant's application because they would need to submit less information (SSA estimated that, at minimum, this will result in more than 7,000 hours of time saved in annual reduced paperwork burden, representing an opportunity cost of \$1,140,526); potentially get faster determinations or decisions regarding SSI eligibility, payment amount, or both, which would have both quantitative effects financially and qualitatively may alleviate stress for applicants and recipients associated with the length of time it may take to obtain SSI; and that it is administratively easier to apply the same policy nationwide. In terms of the anticipated qualitative costs, SSA stated that it does not anticipate that the rule would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the SSI applicant and recipient community.

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

SSA certified that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only.

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

In its submission to us, SSA indicated that it did not discuss the Act in this final rule.

(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, SSA confirmed that it conducted the requisite analysis related to the Act and submitted documentation to OMB. SSA determined that the requirements of the Act do not apply, and stated it, therefore, did not include statements in this final rule.

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

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

On August 24, 2023, SSA published a proposed rule. 88 Fed. Reg. 57910. SSA received 179 public comments in response to the proposed rule. According to SSA, these comments were received from individuals and advocacy groups, such as the National Organization of Social Security Claimants’ Representatives and the Consortium for Constituents with Disabilities. SSA responded to comments in this final rule.

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

SSA stated that this final rule does not require any new collections or revisions to existing collections of information under the Act. However, SSA explained that it anticipates the rule will cause a burden change to the agency’s currently approved information collections under the

following information collection requests: OMB Control Number 0960-0174, the SSA-8006, Statement of Living Arrangements, In-Kind Support and Maintenance; and OMB Control Number 0960-0454, the SSA-L5061, Letter to Landlord Requesting Rental Information. SSA stated that based on its current management information data from the seven states currently implementing these changes, the agency anticipates the rule will allow for verbal responses from landlords in place of the current form in some situations, thus reducing the overall burden, as SSA will not require those respondents to complete the entirety of Form SSA L5061. SSA also noted that it anticipates a slight burden reduction to Form SSA 8006, as the respondents may not need to provide as much detail pertaining to their rental subsidy agreement due to the proposed rule.

According to SSA, it submitted a single new information collection request under the Act which encompasses the revisions to both information collections to OMB for the approval of the changes due to the rule. After approval of this information collection, SSA stated that it will adjust the figures associated with the current OMB Control Numbers for these forms to reflect the new burden.

Statutory authorization for the rule

SSA promulgated this final rule pursuant to sections 902(a)(5), 1381a, 1382, 1382 note, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

SSA stated that it consulted with OMB and that OMB determined that this final rule meets the criteria for a significant regulatory action under the Order. SSA affirmed that OMB reviewed the rule.

Executive Order No. 13132 (Federalism)

SSA determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment under the Order. SSA also determined that the rule will not preempt any state law or state regulation or affect the states' abilities to discharge traditional state governmental functions.