

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

B-336249

May 3, 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: Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work

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 “Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work” (RIN: 0960-AI83). We received the rule on April 18, 2024. It was published in the *Federal Register* as a final rule on April 18, 2024. 89 Fed. Reg. 27653. The effective date is June 8, 2024.

According to SSA, this final rule revises the time period for evaluating whether an individual’s past work is relevant for determining disability. SSA stated that the rule revises the definition of past relevant work (PRW) by reducing the relevant work period from 15 to 5 years. SSA also stated that under the rule it will not consider past work that started and stopped in fewer than 30 calendar days to be PRW. SSA explained these changes will reduce the burden on disability applicants by allowing them to focus on their most current and relevant past work information; better reflect current evidence about worker skills and job responsibilities; reduce processing times; and improve customer service. Finally, SSA stated that the rule includes other minor revisions to its regulations related to PRW.

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). Both Houses of Congress received this final rule on April 19, 2024. Email from Regulations Writer, SSA, to Senior Attorney, GAO, **Subject: RE: SSA Final Rule (0960-AI83) - Intermediate Improvement to the Disability Adjudication Process, Including How [W]e Consider Past Work** (Apr. 22, 2024). The final rule was published in the *Federal Register* on April 18, 2024. 89 Fed. Reg. 27653. The rule has a stated effective date of June 8, 2024. Therefore, the stated effective date is less than 60 days from receipt of the rule by Congress.

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.

A handwritten signature in black ink, appearing to read "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Rachel Nemeth
 Regulations Writer
 Office of Regulations and Reports Clearance
 Social Security Administration

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SOCIAL SECURITY ADMINISTRATION
ENTITLED
“INTERMEDIATE IMPROVEMENT TO THE DISABILITY ADJUDICATION PROCESS,
INCLUDING HOW WE CONSIDER PAST WORK”
(RIN: 0960-AI83)

(i) Cost-benefit analysis

The Social Security Administration (SSA) prepared a cost-benefit analysis for this final rule. SSA estimated that implementation of the rule will result in an increase in scheduled Social Security Disability Insurance benefits of \$22.2 billion, a net reduction in scheduled Old-Age and Survivors Insurance benefits of \$6.3 billion, and an increase in federal Supplemental Security Income payments of \$3.8 billion in total over fiscal years 2024 through 2033, assuming implementation for all decisions made on or after the effective date. SSA also estimated that the increase in the number of disability benefits recipients attributable to the rule's implementation would reduce Old Age, Survivors, and Disability Insurance payroll tax revenue over the next 10 years by a total between \$200 million and \$300 million.

(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

SSA determined that this final rule will not 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.

SSA stated in this final rule, in response to a comment, that the rule complies with the Administrative Pay-As-You-Go Act. In its submission to us, SSA explained that it conducted the requisite analysis related to the Act, and that the Director of OMB waived the requirements of section 263 pursuant to section 265(a)(2) of the Act.

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

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

On September 29, 2023, SSA published a proposed rule. 88 Fed. Reg. 67135. SSA received 99 public comments from individuals, groups submitting comments on behalf of organizations, and the Ranking Congressional Members from the Subcommittee on Social Security and the Subcommittee on Worker and Family Support. SSA responded to comments in this final rule. Of the total comments, 89 are available for public viewing at <https://www.regulations.gov/document/SSA-2023-0024-0001>. SSA explained that it excluded three duplicative comments, one out of scope comment, and six comments from an SSA employee in an official capacity. SSA stated that the vast majority of commenters supported the proposed rule. According to SSA, some commenters agreed with the proposal but recommended changes, either in the final rule or future rulemakings. SSA also noted several other commenters disagreed with the proposal. SSA said it carefully considered those comments, which it summarized and responded to in the rule. Additionally, SSA stated it only addressed issues raised by comments that were within the scope of this rulemaking.

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

SSA determined that this final rule contains information collection requirements under the Act. SSA stated it already has existing OMB PRA-approved information collection tools relating to the rule: Claimant's Work Background (HA-4633, OMB No. 0960-0300); Work History Report SSA-3369, OMB No. 0960-0578; and Disability Report—Adult (SSA-3368, OMB No. 0960-0579). SSA explained that because the rule provides for a shorter work history requirement than previously required, SSA expects the rule will significantly reduce public reporting burdens associated with these forms. SSA estimated a minimum of 938,735 hours of time savings in direct paperwork burden experienced by claimants, as well as additional time savings associated with the overall process of completing the relevant forms. Additionally, SSA estimated the opportunity costs of this time savings will be at least \$62,049,205 annually.

Statutory authorization for the rule

SSA promulgated this final rule pursuant to sections 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 421(m), 422(c), 423, 425, 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b, as well as the notes to sections 421, 423, 902, and 1382h of title 42, United States Code; and section 211(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, title II, subtitle B, 110 Stat. 2105, 2189 (Aug. 22, 1996).

Executive Order No. 12866 (Regulatory Planning and Review)

SSA stated that it consulted with OMB and OMB determined this final rule meets the criteria for a significant regulatory action under the Order and is subject to OMB review.

Executive Order No. 13132 (Federalism)

SSA determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.