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Washington, DC 20548

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May 15, 2024

The Honorable Richard J. Durbin  
Chairman  
The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Jim Jordan  
Chairman  
The Honorable Jerrold Nadler  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Subject: *Department of Health and Human Services, Administration for Children and Families:  
Unaccompanied Children Program Foundational Rule*

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 entitled “Unaccompanied Children Program Foundational Rule” (RIN: 0970-AC93). We received the rule on April 19, 2024. It was published in the *Federal Register* as a final rule on April 30, 2024. 89 Fed. Reg. 34384. The effective date is July 1, 2024.

HHS states that this final rule adopts and replaces regulations relating to key aspects of the placement, care, and services provided to unaccompanied children referred to the Office of Refugee Resettlement (ORR), pursuant to ORR’s responsibilities for coordinating and implementing the care and placement of unaccompanied children who are in federal custody by reason of their immigration status under the Homeland Security Act of 2002 (HSA), Pub. L. No. 107-296, 115 Stat. 2135 (Nov. 25, 2002), and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008). HHS further states that the rule establishes a foundation for the Unaccompanied Children Program (UC Program) that is consistent with ORR’s statutory duties, for the benefit of unaccompanied children and to enhance public transparency as to the policies governing the operation of the UC Program. According to HHS, the rule implements the 1997 *Flores* Settlement Agreement (FSA), which, as modified in 2001, provides that it will terminate 45 days after publication of final regulations implementing the agreement. Finally, HHS states that ORR anticipates that any termination of the settlement based on the rule would only be effective for those provisions that affect ORR and would not terminate provisions of the FSA that apply to other federal government agencies.

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: Samuel Shipley  
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  
“UNACCOMPANIED CHILDREN PROGRAM FOUNDATIONAL RULE”  
(RIN: 0970-AC93)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Administration for Children and Families conducted an economic analysis regarding this final rule. In terms of benefits, HHS estimated that the rule would provide \$0 in annual monetized benefits and no annualized quantified but non-monetized benefits, but would provide unquantified benefits.

In terms of costs, HHS estimated that the rule would present \$1,718,529 in annualized monetized costs and 2,000–4,000 hours in annualized quantified but non-monetized costs.

HHS also estimated that the rule would require \$0 in transfers and would result in net benefits of \$0.

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

HHS certified that this final rule would not have a significant economic impact on a substantial number of small entities under the Act.

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

HHS stated 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.

This final rule does not discuss the Act. In its submission to us, HHS indicated that it did not prepare a statement regarding compliance with the Act.

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

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

On October 4, 2023, HHS promulgated a proposed rule. 88 Fed. Reg. 68908. HHS stated that it received many comments, and it responded to comments in this final rule.

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

HHS stated that this final rule would not require additional information collection requirements beyond those already approved by OMB. HHS further stated that reporting requirements associated with the rule have been approved in accordance with the Act and assigned to OMB Control Numbers 0970-0278 and 0970-0498. According to HHS, an additional form associated with the consent process is currently pending approval with OMB under Control Number 0970-0385. Finally, HHS stated that it would be submitting forms associated with risk determination hearings to OMB for approval as part of a new information collection request as well as submitting associated revisions for approval under OMB Control Number 0970-0565.

Statutory authorization for the rule

HHS promulgated this final rule pursuant to section 279 of title 6 and section 1232 of title 8, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

HHS stated that the final rule is significant within the meaning of the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

HHS stated that this final rule would 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. Notwithstanding HHS's determination that formal consultation is not required under the Order, HHS stated that it welcomed any comments from representatives of state and local juvenile or family residential facilities—among other individuals and groups—during this rulemaking. According to HHS, it did not receive any comments regarding the effects of the rule on the states or the distribution of power and responsibilities among the various levels of government.