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B-336343

May 24, 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: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance*

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 “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance” (RIN: 0945-AA15). We received the rule on April 25, 2024. It was published in the *Federal Register* as a final rule on May 9, 2024. 89 Fed. Reg. 40066. The effective date of the rule is July 8, 2024.

According to HHS, this final rule amends existing regulations implementing section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 867 Stat. 355 (Sept. 26, 1973), as amended, regarding nondiscrimination obligations for recipients of federal financial assistance. HHS states that these amendments will ensure conformity with current law and protect against discrimination on the basis of disability.

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.

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
“NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS
OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE”
(RIN: 0945-AA15)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS) conducted a Regulatory Impact Analysis (RIA) of this final rule. HHS estimated the annualized monetized costs of the rule to be \$1.326 billion at the seven percent discount rate and \$1.302 billion at the three percent discount rate. HHS estimated the annualized monetized benefits of the rule to be \$1.411 billion at the seven percent discount rate and \$1.457 billion at the three percent discount rate. According to HHS, the RIA quantifies benefits people with disabilities are expected to receive and discusses significant benefits and costs the rule is expected to generate that could not be quantified. The RIA also quantifies benefits that will result from accessible web content and mobile applications while addressing unquantified benefits the rule is expected to accrue.

(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 will not have a significant economic impact on a substantial number of small entities. According to HHS, it performed a Regulatory Flexibility Analysis as required under RFA.

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

HHS states that this final rule is not subject to the provisions of the Unfunded Mandates Reform Act of 1995 (UMRA). According to HHS, section 4(2) of UMRA, 2 U.S.C. § 1503(2), excludes from coverage under the Act any proposed or final federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.”

(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 final rule. 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 September 14, 2023, HHS published a proposed rule. 88 Fed. Reg. 63392. HHS received various comments from stakeholders, including disability rights and civil rights legal organizations, as well as academic research centers, regarding different sections of the rule. HHS responded to comments in this final rule.

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

HHS determined this final rule contained information collection requirements (ICRs) subject to PRA. HHS stated the ICR is entitled ““Discrimination on the Basis of Disability in Health and Human Service Programs or Activities”. According to HHS, the ICR is associated with OMB Control Number 0945-0013. HHS estimated the ICR would have a total annual burden of 256,763 hours.

Statutory authorization for the rule

HHS promulgated this final rule pursuant to section 794 of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

HHS determined that this final rule is a significant regulatory action under the Order.

Executive Order No. 13132 (Federalism)

HHS concluded that this final rule has federalism implications but notes that state law will continue to govern unless displaced under standard principles of preemption.