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United States General Accounting Office
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April 30, 2004

The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security: Adjustment of the Immigration Benefit Application Fee Schedule*

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, Bureau of Citizenship and Immigration Services (BCIS), entitled "Adjustment of the Immigration Benefit Application Fee Schedule" (RIN: 1615-AA84). We received the rule on April 16, 2004. It was published in the Federal Register as a "final rule and confirmation of interim rules" on April 15, 2004. 69 Fed. Reg. 20528.

The final rule adjusts the fee schedule of the Immigration Examinations Fee Account for immigration benefit applications and petitions, as well as the fee for capturing biometric information of applicants or petitioners who apply for certain immigration benefits.

On January 5, 2004, our Office issued a report entitled "*Immigration Application Fees: Current Fees Are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations*" (GAO-4-309R). The report concluded that the current fee schedule was based on an outdated fee study that did not include all costs of BCIS's operations and that costs had increased since that study was completed due to an additional processing requirement and other actions.

The final rule has an announced effective date of April 30, 2004. The Congressional Review Act 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). The rule was published in the Federal Register on April 15, 2004. It was received by the House of Representatives on April 16, 2004, and by the Senate on April 21, 2004. Therefore, the rule does not have the required 60-day delay.

BCIS, in the preamble to the final rule, states that it has found “good cause” under 5 U.S.C. 553(d)(3) and 5 U.S.C. 808(2) to make the rule effective 15 days after publication because without prompt change in the fee schedule, BCIS will not have sufficient resources to process immigration benefit applications and adequately perform its mission.

Section 808(2) provides that where an agency for “good cause” finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the delay provisions of section 801 do not apply. Here, BCIS did not make such a finding previously but published the proposed rule on February 3, 2004, in accordance with the Administrative Procedure Act. It received and considered comments on the proposed rule. As discussed in our report on a major rule issued by the then Health Care Financing Administration concerning Medicare (B-275549, B-275552, December 9, 1996), the “good cause” exception to the 60-day delay provision found at section 808(2) is not available when notice and comment procedures have been used.

Enclosed is our assessment of the BCIS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the 60-day delay in the effective date, the BCIS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Richard A. Sloan
Director, Regulations and Forms Services
Department of Homeland Security

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY
ENTITLED
"ADJUSTMENT OF THE IMMIGRATION BENEFIT
APPLICATION FEE SCHEDULE"
(RIN: 1615-AA84)

(i) Cost-benefit analysis

The Bureau of Citizenship and Immigration Services estimates that implementation of the final rule will provide BCIS with an additional \$232 million in fiscal year 2004 and \$394 million in fiscal year 2005, based on a projected annual fee-paying volume of 6.8 million applications and petitions over the current fee schedule.

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

According to BCIS, the final rule will not have a significant economic impact on a substantial number of small entities.

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

The final rule will not impose either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. The final rule finalizes two interim rules published on January 24, 2003, and February 27, 2003, found at 68 Fed. Reg. 2798 and 8989, respectively. In addition, on February 3, 2004, BCIS published a Notice of Proposed Rulemaking in the Federal Register. 69 Fed. Reg. 5088. In response, BCIS received 278 comments, which are discussed in the preamble to the final rule.

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

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority found at 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; and Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*)

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

BCIS has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.