



Office of the General Counsel

B-275487

December 5, 1996

The Honorable Alfonse M. D'Amato
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing and Urban Affairs
United States Senate

The Honorable James A. Leach
Chairman
The Honorable Henry B. Gonzalez
Ranking Minority Member
Committee on Banking and Financial Services
House of Representatives

Subject: United States Department of Agriculture, Rural Housing Service:
Reengineering and Reinvention of the Direct Section 502 and 504 Single
Family Housing Program

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by United States Department of Agriculture, Rural Housing Service (RHS), entitled "Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing Program" (RIN: 0575-AB99). We received the rule on November 18, 1996. It was published in the Federal Register as an interim final rule on November 22, 1996. 61 Fed. Reg. 59762.

The interim final rule sets forth revised and combined rules for carrying out the requirements of sections 502 and 504 of the Housing Act of 1949 and combines the current 18 regulations into one rule as part of the National Performance Review Program. The rule, among other changes, implements a Dedicated Loan Origination System which will utilize many of the methods used by private mortgage companies to improve program performance and efficiency to the program's customers.

The effective date of the rule is December 26, 1996, which is less than the 60 days delay in a rule's effective date required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In accelerating the effective date, RHS stated that it had determined under 5 U.S.C. § 808(2) that a delay in

implementing the rule would forestall the savings the rule will produce and would be contrary to the public interest. This asserted authority is based on a misreading of section 802(2); RHS is not authorized by that provision to avoid the 60-day delay imposed by SBREFA.

Section 808(2) states that, notwithstanding section 801, "any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" shall take effect at such time as the Federal agency promulgating the rule determines. This language mirrors the exception in the Administrative Procedure Act (APA) to the requirement for notice and comment in rulemaking. 5 U.S.C. § 553(b)(3)(B). Here, RHS issued a notice of proposed rulemaking on April 8, 1996, received comments and issued this interim final rule. Since APA notice and public procedures were used, section 808(2) is unavailable to invoke as an exception to the 60-day delay in a rule's effective date. Moreover, the prospect of monetary savings has been found insufficient to invoke the good cause exception under the APA. Levesque v. Block, 723 F.2d 175, 184 (1st Cir. 1983).

Enclosed is our assessment of RHS's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that RHS, with the exception noted above, complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the United States Department of Agriculture, Rural Housing Service is Judy England-Joseph, Director, Housing and Community Development Issues. Mrs. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Jill Long Thompson
Under Secretary
Rural Development
Department of Agriculture

ANALYSIS UNDER 5 U.S.C. §§ 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING
SERVICE
ENTITLED
"REENGINEERING AND REINVENTION OF THE DIRECT SECTION 502 AND 504
SINGLE FAMILY HOUSING PROGRAM"
(RIN: 0575-AB99)

(i) Cost-benefit analysis

The Regulatory Impact Analysis of the interim final rule discusses the costs and benefits of the regulatory action. RHS estimates that the government will realize savings of \$250 million through fiscal year 2002 through implementation of the Dedicated Loan Origination System (DLOS) which will allow the use of many methods and technologies used by private mortgage companies including escrow of taxes and insurance. This escrowing will allow savings on tax vouchering of \$20 million per year and interest earned on the escrow accounts of \$7 million per year. Escrowing will also reduce the number of defaults and foreclosures and a savings of \$68 million per year is estimated from the reduced costs of defaults and foreclosures when DLOS is fully implemented in fiscal year 2002.

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

The Under Secretary for Rural Development and the Acting Under Secretary for Farm and Foreign Agricultural Services have determined and certified that the rule will not have a significant economic impact on a substantial number of small entities since the rulemaking action does not involve a new or expanded program. Publication of the certification in the Federal Register was treated by RHS as providing notice under section 605(b) to the Small Business Administration's (SBA) Chief Counsel for Advocacy. The SBA has confirmed that some agencies follow this practice without objection from SBA.

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

In the preamble to the interim final rule, the RHS explains that the rule does not contain a Federal mandate under Title 2 of the Act for State, local or tribal governments or the private sector and therefore, sections 202 and 205 of the Act are inapplicable.

In addition, the rule does not affect small governments or contain a significant intergovernmental mandate. Accordingly, sections 203 and 204 of the Act, which require agencies to consult with small governments and solicit input from State, local or tribal governments, are also inapplicable.

(iv) Other relevant information or requirements under Acts and Executive orders

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

The rule was promulgated through the notice and comment rulemaking procedures of the Act, 5 U.S.C. § 553. The proposed rule was published in the Federal Register on April 8, 1996 (61 Fed. Reg. 15395) with a 60-day comment period. Thirty five comments were received and RHS's response to the comments are contained in the preamble to the interim final rule.

Additional comments are solicited in the preamble to the interim final rule regarding four sections of the rule which generated the most comments including, among others, limiting the maximum loan to a percentage of the HUD 203(b) limits, modifying the floor payment to a more incremental scale and modifying the equivalent interest rates from one-half percent increments to one-quarter percent increments. These four sections are adopted as an interim rule pending receipt of additional comments while the remainder of the rule is adopted as a final rule.

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

The information collection requirements of the rule have been reviewed and approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0166. The information collection requirements of the Handbooks which accompany the rule have been submitted to OMB for review. The information regarding this collection was published in the Federal Register on July 18, 1996 (61 Fed. Reg. 37440) and no comments were received.

RHS notes in the preamble to the interim final rule that the information collection requirements represent an 11 percent reduction in burden hours and a 20 percent reduction in information collections costs over prior requirements.

Statutory authorization for the rule

Section 1480(k) of Title 42 of the United States Code authorizes the Secretary of Agriculture to make such rules as deemed necessary to carry out the purposes of the Housing Act of 1949. This rule implements changes to sections 502 and 504 of the Act (42 U.S.C. §§ 1472 and 1474).

Executive Order No. 12866

This rule was reviewed and approved by the Office of Management and Budget, Office of Regulatory Affairs (OIRA) under the Order based on the information supplied by RHS including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule. The rule was found to be a significant regulatory action by OIRA.

Other Executive Orders and Statutes

The preamble to the interim final rule states that the rule has been reviewed under Executive Order No. 12372 (Intergovernmental cooperation) and found not subject to the Order. Also, the rule was reviewed in accordance with the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*) and found not to be a major Federal action significantly affecting the quality of the human environment and therefore, an Environmental Impact Statement is not required.

The preamble also states that the interim final rule was reviewed pursuant to Executive Order No. 12778 (Civil Justice Reform). However, that Executive Order has been replaced by Executive Order No. 12988, effective May 5, 1996. The prior Executive Order contained a similar requirement now found at section 3(b)(2)(A) of the newly effective Order requiring that the preemptive effects of the rule be specified. RHS has determined that the provisions of the rule that preempt State and local laws to the extent such State and local laws are inconsistent with the rule meet those standards.