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Washington, DC 20548

B-331773

February 3, 2020

The Honorable Chuck Grassley  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of the Treasury, Office of Investment Security: Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States*

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 the Treasury (Treasury), Office of Investment Security entitled "Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States" (RIN: 1505-AC63). We received the rule on January 17, 2020. It was published in the *Federal Register* as final rule; interim rule with request for comments on January 17, 2020. 85 Fed. Reg. 3158. The effective date of both the final and interim rule is February 13, 2020.

The final rule establishes regulations to implement the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Pub. L. No. 115-232, div. 8, title XVII, subtitle A., 132 Stat. 1636, 2173 (2018). According to Treasury, the rule sets forth the scope of, and process and procedures relating to, the national security review by the Committee on Foreign Investment in the United States of certain transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. The interim rule also adds a new definition for the term "principal place of business."

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). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). Treasury found good cause to waive the 60-day delay because the provisions of FIRRMA the final rule implements will become effective on February 13, 2020, regardless of whether the rule is published and effective. According to

Treasury, without the processes, procedures, and definitions provided by the rule as directed by FIRRMA, market participants will face substantial hardship, delay, and expense in complying with the requirements of FIRRMA.

Enclosed is our assessment of the Treasury Department'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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen  
Senior Legal Advisor for Regulatory Affairs  
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY,  
OFFICE OF INVESTMENT SECURITY  
ENTITLED  
“PROVISIONS PERTAINING TO CERTAIN TRANSACTIONS  
BY FOREIGN PERSONS INVOLVING REAL ESTATE  
IN THE UNITED STATES”  
(RIN: 1505-AC63)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury (Treasury), Office of Investment Security indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

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

Treasury certified 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

Treasury did not discuss the Act in the final rule.

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

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

On September 24, 2019, Treasury published a proposed rule. 84 Fed. Reg. 50214. Treasury received a number of written comments and responded to them in the final rule. Treasury also hosted a public teleconference call to discuss the proposed rule on September 27, 2019. Treasury is holding a comment period for the interim rule, which closes February 18, 2020.

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

Treasury determined the final rule contained information collection requirements (ICRs) subject to the Act. Treasury submitted the ICRs to the Office of Management and Budget (OMB) for review. The ICRs in this final rule are associated with OMB Control Number 1505-0121.

Statutory authorization for the rule

Treasury promulgated this final rule pursuant to section 4565 of title 50, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

Treasury determined the final rule was not subject to the Order because the rule relates to a foreign affairs function of the United States and also is not subject to review by OMB under the April 11, 2018, Memorandum of Agreement between Treasury and OMB.

Executive Order No. 13,132 (Federalism)

Treasury did not discuss the Order in the final rule.