



441 G St. N.W.  
Washington, DC 20548

B-335112

March 27, 2023

The Honorable Sherrod Brown  
Chairman  
The Honorable Tim Scott  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Patrick McHenry  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Department of Housing and Urban Development: Increased Forty-Year Term for Loan Modifications*

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 Housing and Urban Development (HUD) entitled "Increased Forty-Year Term for Loan Modifications" (RIN: 2502-AJ59). We received the rule on March 9, 2023. It was published in the *Federal Register* as a final rule on March 8, 2023. 88 Fed. Reg. 14252. The effective date is May 8, 2023.

According to HUD, this final rule allows mortgagees to modify a Federal Housing Administration (FHA)-insured mortgage by recasting the total unpaid loan for a term limited to 360 months to cure a borrower's default. HUD stated that the rule amends its regulation to allow for mortgagees to recast the total unpaid loan for a new term limit of 480 months. In the rule, HUD indicated that increasing the maximum term limit to 480 months will allow mortgagees to further reduce the borrower's monthly payment as the outstanding balance would be spread over a longer time frame, providing more borrowers with FHA-insured mortgages the ability to retain their homes after default. HUD stated that this change will also align FHA with modifications available to borrowers with mortgages backed by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which both currently provide a 40-year loan modification option. Lastly, HUD noted that the rule adopts the agency's April 1, 2022, proposed rule without change.

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 rule was published in the *Federal Register* on March 8, 2023. 88 Fed. Reg. 14252. The final rule was received by the House of Representatives on March 20, 2023. 169 Cong. Rec. EC588 (daily ed. Mar. 21, 2023). The *Congressional Record* does not yet reflect the date of receipt by the Senate. HUD sent us

confirmation that the rule was received by the Senate on March 14, 2023. Email from Office of General Counsel, Department of Housing and Urban Development, to Staff Attorney, GAO, *Subject: HUD's CRA Report for Increased Forty-Year Term for Loan Modifications (FR-6263-F-02) Published March 8, 2023 (Mar. 23, 2023)*. The rule has a stated effective date of May 8, 2023. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of HUD'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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Aaron Santa Anna  
Associate General Counsel for Legislation and Regulations  
Department of Housing and Urban Development

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ENTITLED  
“INCREASED FORTY-YEAR TERM FOR LOAN MODIFICATIONS”  
(RIN: 2502-AJ59)

(i) Cost-benefit analysis

The Department of Housing and Urban Development (HUD) presented the costs and benefits of this final rule by describing and responding to comments in support of and in opposition to the proposed rule, which was adopted by the final rule without change. HUD agreed with many of the comments it received in support of the rule, including comments that the rule will help struggling homeowners, that the rule will help individuals build wealth, that the rule will help borrowers harmed by the COVID-19 pandemic, that the rule will promote financial inclusion and equity, that the rule will benefit the housing market, that the rule aligns loss mitigation policies between different regulators, that the rule will benefit the Federal Housing Administration’s lending program, and that the benefits of the rule outweigh the downsides of extended loan terms. HUD also responded to comments in opposition to the rule, including comments that the rule will distort the housing market and reduce affordability, and that borrowers are better off without the 40-year term loan modifications. In its responses to these comments about the potential costs of the rule, HUD presented factors that it believed would mitigate the effect of these potential costs.

Additionally, with respect to its proposed rule from April 1, 2022, 87 Fed. Reg. 19037, HUD prepared a Regulatory Impact Analysis (RIA) that included a cost-benefit analysis of the proposed rule, which is available in the associated docket. In this final rule, HUD referenced the RIA in its responses to the comments mentioned in the preceding paragraph. HUD stated in this final rule that the rule adopts the proposed rule without change.

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

HUD certified that the rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

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

HUD determined that this final rule will not have an effect on state, local, or tribal governments, or on the private sector, within the meaning of the Act.

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

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

On April 1, 2022, HUD published a proposed rule. 87 Fed. Reg. 19037. HUD received 20 comments in response to the proposed rule. HUD responded to comments in this final rule

and discussed them in three categories: support for the proposed rule, opposition to the proposed rule, and suggested revisions and additions to the proposed rule.

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

In its submission to us, HUD indicated that this final rule does not contain information collection requirements under the Act.

Statutory authorization for the rule

HUD promulgated this final rule pursuant to various sections of title 12, as well as pursuant to section 1639c of title 15, and section 3535(d) of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

HUD stated that this final rule was determined to be a “significant regulatory action” under the Order and provided instructions for how to access the docket file that was made available for public inspection.

Executive Order No. 13132 (Federalism)

In this final rule, HUD stated that the rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments, or preempt state law within the meaning of the Order.