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United States General Accounting Office
Washington, DC 20548

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March 22, 2002

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

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

Subject: Department of Justice, Office of the Attorney General: September 11th
Victim Compensation Fund of 2001

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 Justice (DOJ), Office of the Attorney General, entitled "September 11th Victim Compensation Fund of 2001" (RIN: 1105-AA79). We received the rule on March 8, 2002. It was published in the Federal Register as a final rule on March 13, 2002. 67 Fed. Reg. 11233.

The final rule makes certain changes and clarifications regarding the "September 11th Victim Compensation Fund of 2001." They are, among others, the treatment of "collateral sources," including pensions, and adjusting the "presumed" economic loss methodology in a manner that should increase potential awards for most claimants.

The final rule has an announced effective date of March 13, 2002--the date of publication in the Federal Register. 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).

DOJ states that it has found "good cause" under 5 U.S.C. 808(2) of the Congressional Review Act for making the final rule effective upon publication. Section 808(2) states that where an agency for "good cause" finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the delay provisions of section 801 do not apply. GAO has always found the exemption at

section 808(2) to the 60-day delay requirement to only be available if the agency did not receive public comments on the rule. See Department of Health and Human Services, Health Care Financing Administration: Medicare Program, B-275549; B-275552, December 9, 1996, GAO/OGC-97-9. Here, DOJ notes that it received thousands of comments on the interim final rule, which it considered in promulgating the instant rule. While we recognize the reasons for DOJ's determination to have the rule effective upon publication in order to allow awards to be received as soon as possible, the rule does not comply with the delay provisions of section 801(a)(3)(A).

Enclosed is our assessment of the DOJ'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, DOJ 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, Tax Administration and Justice. Mr. Rabkin can be reached at (202) 512-9110.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Kenneth L. Zwick
Executive Officer, Civil Division
Department of Justice

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL
ENTITLED
"SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001"
(RIN: 1105-AA79)

(i) Cost-benefit analysis

DOJ did not prepare a cost-benefit analysis of the final rule.

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

The Attorney General has certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule provides compensation to individuals, not 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 does not contain 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.

DOJ has found "good cause" under 5 U.S.C. 553(d) for not delaying the effective date of the final rule because it would be against the public interest to delay the opportunity for eligible claimants to avail themselves of the final rule's changes in the regulations and to receive awards as soon as possible.

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

The final rule contains two information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. DOJ has requested approval on an emergency basis for 180 days, and during this time period it will request a normal review of the collections by OMB.

DOJ estimates that the collections will be completed by approximately 5,000 claimants with an average response time of 15 hours for a total burden of 75,000 hours.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority contained in the September 11th Victim Compensation Fund of 2001, Title IV of Public Law 107-42, 115 Stat. 230 (Air Transportation Safety and System Stabilization Act).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

The final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.