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United States Government Accountability Office
Washington, DC 20548

B-321202

November 30, 2010

The Honorable Carl Levin
Chairman
The Honorable John McCain
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Ike Skelton
Chairman
The Honorable Howard P. “Buck” McKeon
Ranking Member
Committee on Armed Services
House of Representatives

Subject: *Department of Defense, Office of the Secretary: Homeowners Assistance Program--Application Processing*

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 Defense (DOD), Office of the Secretary, entitled “Homeowners Assistance Program--Application Processing” (RIN: 0790-AI58). We received the rule on November 10, 2010. It was published in the *Federal Register* as a final rule on November 16, 2010, with an effective date of January 18, 2011. 75 Fed. Reg. 69,871.

The final rule, 32 C.F.R. part 239, continues to authorize the Homeowners Assistance Program (HAP) to financially compensate eligible military and civilian federal employee homeowners when the real estate market is adversely affected directly related to the closure or reduction-in-scope of operations due to Base Realignment and Closure (BRAC). The American Recovery and Reinvestment Act of 2009 (ARRA) expanded the HAP to provide assistance to: wounded members of the Armed Forces (30 percent or greater disability), surviving spouses of fallen warriors, and wounded DOD civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with their disability; BRAC 2005 impacted homeowners relocating during the mortgage crisis; and service member homeowners undergoing Permanent Change of Station (PCS) moves during the mortgage crisis.

The prompt implementation of the final rule is of critical importance in meeting the goals of the DOD to provide financial stability and increase quality of life for those impacted by the mortgage crisis. DOD will provide financial assistance to offset financial losses of homeowners who need to sell their homes in conjunction with PCS moves, base closures, combat injuries, or loss of spouse in the line of duty.

Enclosed is our assessment of DOD'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 of the procedural steps taken indicates that DOD complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Patricia L. Toppings
OSD Federal Register Liaison Officer
Department of Defense

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF DEFENSE,
OFFICE OF THE SECRETARY
ENTITLED
"HOMEOWNERS ASSISTANCE PROGRAM--
APPLICATION PROCESSING"
(RIN: 0790-AI58)

(i) Cost-benefit analysis

In its submission to the Comptroller General, DOD did not include 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

DOD certifies that 32 C.F.R. part 239, is not subject to the Regulatory Flexibility Act (5 U.S.C. § 601) because it would not, if promulgated, 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

DOD certifies that 32 C.F.R. part 239, does not contain a federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more 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 regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On September 30, 2009, DOD published the interim final rule in the *Federal Register*. 74 Fed. Reg. 50,109. In response to the interim final rule, DOD received 56 comments, which are addressed in the final rule.

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

DOD certifies that 32 C.F.R part 239, does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These requirements have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0704-0463.

Statutory authorization for the rule

DOD states that the final rule is issued pursuant to the authority found in 42 U.S.C. § 3374, as amended by section 1001, ARRA, Pub. L. No. 111-5.

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

This rule is an economically significant regulatory action under section 3(f) of Executive Order 12,866 because it is expected to have an annual effect on the economy of more than \$100 million and materially alter the budgetary impact of the Homeowners Assistance Program. Accordingly, OMB has reviewed this rule.

Executive Order No. 13,132 (Federalism)

DOD certifies that 32 C.F.R part 239 does not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government and, therefore, does not have federalism implications.