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B-319283

February 4, 2010

The Honorable Jeff Bingaman  
Chairman  
The Honorable Lisa Murkowski  
Ranking Minority Member  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Henry A. Waxman  
Chairman  
The Honorable Joe L. Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Department of Energy: Weatherization Assistance Program for Low-Income Persons*

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 Energy (DOE), entitled “Weatherization Assistance Program for Low-Income Persons” (RIN: 1904-AB97). We received the rule on January 25, 2010. It was published in the *Federal Register* as a final rule on January 25, 2010. 75 Fed. Reg. 3847.

The final rule amends the eligibility provisions applicable to multi-unit buildings under the Weatherization Assistance Program for Low-Income Persons. If a multi-unit building is under an assisted or public housing program and is identified by the U.S. Department of Housing and Urban Development (HUD), or participates in the U.S. Department of Agriculture’s (USDA) Rural Housing Service’s Multifamily Housing Programs, and included on a list published by DOE, that building will meet certain income eligibility requirements, and will also satisfy one or more of the procedural requirements under the Weatherization Assistance Program without the need for further evaluation or verification. The final rule will reduce the procedural burdens on evaluating applications from buildings that are part of HUD assisted and public housing programs, the Federal Low Income Housing Tax Credit Program, and the USDA Rural Development Program.

The final rule has an announced effective date of February 24, 2010. The Congressional Review Act requires 60 days between the effective date of a major rule and the later of the publication of the rule in the *Federal Register* or receipt by Congress of a report containing a copy of the final rule, a concise general statement, including whether or not the rule is a major rule, and the proposed effective date of the rule. 5 U.S.C. § 802(a)(3)(A). This final rule was published in the *Federal Register* and received by GAO on January 25, 2010. Therefore, this final rule does not have the required 60-day period prior to its effective date.

Enclosed is our assessment of DOE'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, with the exception of the 60-day period prior to the effective date, DOE 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: Daniel Cohen  
Assistant General Counsel for Legislation,  
Regulation, and Energy Efficiency  
Department of Energy

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF ENERGY  
ENTITLED  
"WEATHERIZATION ASSISTANCE PROGRAM  
FOR LOW-INCOME PERSONS"  
(RIN: 1904-AB97)

(i) Cost-benefit analysis

DOE prepared a cost-benefit analysis in conjunction with the final rule. DOE states that the American Recovery and Reinvestment Act of 2009 provided \$5 billion for the weatherization program, and that the grants provided under this program constitute transfer payments, meaning that they do not represent a change in the total resources available to society. DOE states that the final rule will have the benefit of improving weatherization. DOE acknowledges that the final rule could impact the process used by grantees and subgrantees to evaluate applications with respect to multi-unit buildings for the purpose of distributing funds provided under the Recovery Act, and that could potentially result in a change of the distribution of funding.

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

The Regulatory Flexibility Act requires the preparation of a regulatory flexibility analysis for any final rule promulgated by an agency that is required to publish a general notice of proposed rulemaking under the Administrative Procedure Act (APA). 5 U.S.C. § 604(a). The final rule is not subject to the notice and comment provisions of the APA because the rule relates to grants. 5 U.S.C. § 553(a)(2). Therefore, DOE was not required to, and did not, prepare a regulatory flexibility analysis for the final rule.

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

DOE determined that the final rule will not impose a federal mandate on state, local, or tribal governments, and it will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Therefore, DOE did not prepare an analysis under the Unfunded Mandates Reform Act.

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

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

DOE published a notice of proposed rulemaking on May 21, 2009. 74 Fed. Reg. 23,804. On June 12, 2009, DOE published a notice announcing a public meeting that was held on June 18, 2009, and extending the comment period to July 6, 2009. 74 Fed. Reg. 27,945. DOE responded to comments in the final rule. 75 Fed. Reg. 3847.

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

The final rule does not address the Paperwork Reduction Act. The rule does not require any submissions to DOE and simply changes eligibility requirements set forth by DOE, in conjunction with other federal agencies.

Statutory authorization for the rule

The final rule is authorized by sections 411-418 of the Energy Conservation and Production Act, codified at 42 U.S.C. 6861 et seq.

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

The final rule was determined to be a significant regulatory action under Executive Order 12,866, and reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

DOE determined that the final rule will not preempt state laws and will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.