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February 16, 2010

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

The Honorable Ike Skelton
Chairman
The Honorable Howard P. “Buck” McKeon
Ranking Minority 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 January 29, 2010. It was published in the *Federal Register* as an interim final rule on September 30, 2009. 74 Fed. Reg. 50,109.

The interim final rule expands the Homeowners Assistance Program (HAP) to provide assistance to wounded members of the Armed Forces (30 percent or greater disability), surviving spouses of fallen warriors, wounded DoD civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to retirement in connection with their disability, Base Realignment and Closure 2005 impacted homeowners relocating during the mortgage crisis, and Service member homeowners undergoing Permanent Change of Station moves during the mortgage crisis.

The interim final rule, a major rule under the Congressional Review Act (CRA), has an announced effective date of September 30, 2009. 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 September 30, 2009, but we did not

receive the rule until January 29, 2010. Therefore, the interim final rule does not have the required 60-day delay in its effective date.

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, with the exception of the effective date, 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

DoD did not prepare a cost-benefit analysis in conjunction with the final rule.

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

DoD certified that the interim final rule is not subject to the Regulatory Flexibility Act, 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 certified that the interim final rule 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. Therefore, DoD 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.

DoD published this interim final rule in the *Federal Register* on September 30, 2009. 74 Fed. Reg. 50,109. DoD accepted comments on the rule through October 30, 2009.

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

The interim final rule imposes reporting or recordkeeping requirements under the Paperwork Reduction Act. DoD submitted these requirements to the Office of Management and Budget for approval under the Act.

Statutory authorization for the rule

The final rule is authorized by section 1001 of the American Reinvestment and Recovery Act, Pub. L. 111-5 (2009).

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

The final rule was determined to be economically significant and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

DoD certified that the interim final rule does not have federalism implications, because it does not have substantial direct effects on the states, the relationship between the federal government and the states, or on the distribution of power among the various levels of government.