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May 20, 2011

The Honorable Patty Murray
Chairman
The Honorable Richard M. Burr
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Jeff Miller
Chairman
The Honorable Bob Filner
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Caregivers Program*

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 Veterans Affairs (VA), entitled "Caregivers Program" (RIN: 2900-AN94). We received the rule on May 9, 2011. It was published in the *Federal Register* as an interim final rule on May 5, 2011. 76 Fed. Reg. 26,148. The stated effective date of the rule is also May 5, 2011.

The interim final rule implements statutory provisions creating a new caregiver benefits program provided by VA. Specifically, this rule implements title I of the Caregivers and Veterans Omnibus Health Services Act of 2010¹ which created a comprehensive program of assistance and support services for caregivers of eligible service members and veterans. The purpose of the new caregiver benefits program is to provide certain medical, travel, training, and financial benefits to caregivers of certain veterans and service members who were seriously injured in the line of duty on or after September 11, 2001.

Enclosed is our assessment of the VA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule.

¹Pub. L. No. 111-163, §§ 101–104, 124 Stat. 1130, 1134–1141 (May 5, 2010).

Our review of the procedural steps taken indicates that VA complied with the applicable requirements.

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). This interim final rule was published on May 5, 2011. It was received by the Senate on May 4, 2011, and by the House of Representatives on May 5, 2011.² This rule has a stated effective date of May 5, 2011. Therefore this interim final rule does not have a 60-day delay in its effective date. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). VA found that good cause existed under section 808(2) to make this regulatory action effective immediately, consistent with the publication of this interim final 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Robert C. McFetridge
Director, Regulations Policy and Management
Office of the General Counsel
Department of Veterans Affairs

²157 Cong. Rec. S2777 (May 9, 2011); 157 Cong. Rec. H3277 (May 12, 2011).

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
"CAREGIVERS PROGRAM"
(RIN: 2900-AN94)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) analyzed the costs and benefits of this interim final rule. VA's estimated costs associated with this regulation are \$69,044,469.40 for fiscal year 2011 and \$777,060,923.18 over a 5-year period. This estimate includes costs associated with the implementation and development of the caregiver support program. The potential benefits identified by VA include assistance and support for hundreds of caregivers or potential caregivers of seriously injured service members and veterans. The purpose of providing family caregiver assistance is to benefit eligible veterans whose personal care service needs could be substantially satisfied with the provision of such services by a family member and to provide eligible veterans with additional options so that they can choose the setting for the receipt of personal care services that best suits their needs.

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

VA determined that this interim final rule will not have a significant 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

VA determined that this interim final rule will not result in the expenditure by state, local, or tribal governments, in the 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.

VA found good cause in accordance with section 553(b) of title 5, United States Code, to issue this interim final rule prior to notice and comment procedures. VA determined that Congress indicated a clear intent to have the Caregivers Program

implemented as swiftly as possible, requiring the program become effective 270 days after the statutory enactment, namely by January 30, 2011.¹ Since enactment, VA has continued to engage with stakeholders concerning this rulemaking. Under these circumstances, the VA found that seeking public notice and comment in addition to the statutorily-directed stakeholder consultations prior to issuance is impracticable and that further delay would thwart congressional intent to deliver these benefits to caregivers in need expeditiously.

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

This interim final rule contains an information collection requirement under the Act that VA has submitted to the Office of Management and Budget (OMB) for review. The information collection requirement is entitled “Caregivers Program” and VA estimates that it will have 5,000 respondents per year with a total annual reporting and recordkeeping burden of 1,250 hours.

Statutory authorization for the rule

VA promulgated this interim final rule under the authority of section 1720G of title 38, United States Code.

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

VA determined that this rule is economically significant under Executive Order 12,866 and therefore the rule was reviewed by OMB.

¹Pub. L. No. 111-163, § 101(a)(3), 124 Stat. 1130, 1137 (May 5, 2010).