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August 16, 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: Vocational Rehabilitation and Employment Program--Changes to Subsistence Allowance*

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 "Vocational Rehabilitation and Employment Program--Changes to Subsistence Allowance" (RIN: 2900-AO10). We received the rule on August 1, 2011. It was published in the *Federal Register* as an interim final rule on August 1, 2011. 76 Fed. Reg. 45,697.

The interim final rule amends Department of Veterans Affairs' regulations to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, effective August 1, 2011, that affect payment of vocational rehabilitation benefits for certain service-disabled veterans. Under the interim final rule, a veteran, who is eligible for a subsistence allowance under chapter 31 of title 38 of the United States Code, and educational assistance under chapter 33 of title 38 of the United States Code, may participate in a rehabilitation program under chapter 31 and elect to receive a payment equal in amount to an applicable military housing allowance payable under title 37, United States Code, instead of the regular subsistence allowance under chapter 31. In addition, the interim final rule discontinues payments of subsistence allowances during periods between school terms and modifies payments made during periods of temporary school closings.

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 received by GAO on August 1, 2011, and it was also published on August 1, 2011. This rule has a stated effective date of August 1, 2011. Therefore, this final rule does not have a 60-day delay in its effective date. However, 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 good cause to waive the delay for this rule.

Enclosed is our assessment of 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. Our review of the procedural steps taken indicates that VA 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: Robert C. McFetridge
Director, Regulation Policy & Management
Office of General Counsel
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
"VOCATIONAL REHABILITATION AND
EMPLOYMENT PROGRAM--CHANGES TO
SUBSISTENCE ALLOWANCE"
(RIN: 2900-AO10)

(i) Cost-benefit analysis

VA prepared a cost-benefit analysis in conjunction with the interim final rule. VA stated that the benefit of the interim final rule will be that chapter 31 participants who are eligible to receive the greater subsistence allowance under the interim final rule will require less dependence on support programs and will be able to devote more attention to their chapter 31 training/rehabilitation program, thus creating better employment opportunities and quality of life.

VA also detailed the potential program costs of the interim final rule. VA believes that all of the estimated 21,727 participants who will be eligible to receive the Post-9/11 subsistence allowance based on their OEF/OIF service will do so, and with a difference between the subsistence allowance rates of \$7,482.82 per year, the total additional annual cost in fiscal year (FY) 2012 will be approximately \$163 million and \$1.13 billion total over a 5-year period. The interim final rule also disallows the payment of either chapter 31 or Post-9/11 subsistence allowance during intervals between school terms, and it applies to all participants of the chapter 31 program who are currently participating in a training/rehabilitation program for which subsistence allowance is payable. VA estimated that the savings associated with this change would be \$51.3 million during FY 2012 and \$275.7 million over a 5-year period.

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

VA certified that the interim final rule will not 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

VA stated that the interim final rule will not result in expenditure of \$100 million or more in any given year by state, local, or tribal governments, or by the private sector.

(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 under 5 U.S.C. § 553(b)(3)(B) to dispense with the advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. VA found that it was impracticable and contrary to the public interest to delay the rule for the purpose of soliciting prior public comment because the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, which became law on January 4, 2011, requires that certain changes to the rehabilitation program take effect on August 1, 2011. VA will consider and address comments that are received on or before August 31, 2011.

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

The interim final rule does not contain any information collection requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The interim final rule is authorized by sections 205 and 206 of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, Pub. L. No. 111-377.

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

The interim final rule has been designated as economically significant under Executive Order 12,866, and the rule has been reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

The interim final rule does not address Executive Order No. 13,132.