



United States Government Accountability Office
Washington, DC 20548

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January 26, 2012

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 January 9, 2012. It was published in the *Federal Register* as a final rule on January 12, 2012. 77 Fed. Reg. 1872.

The final rule adopts as final, without change, the interim final rule effective August 1, 2011, amending VA regulations that affect payment of vocational rehabilitation benefits for certain service-disabled veterans to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010. Under the 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 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 final rule was received by GAO on January 9, 2012, and it was published on January 12, 2012. This rule has a stated effective date of January 12, 2012. 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 and
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
SUSTAINANCE ALLOWANCE"
(RIN: 2900-AO10)

(i) Cost-benefit analysis

VA did not include a cost-benefit analysis in the final rule. However, in the interim final rule dated August 1, 2011, 76 Fed. Reg. 45,697, which this final rule adopts without change, VA did include a cost-benefit analysis. GAO discussed that analysis in our report on the interim final rule. GAO-11-911R, Aug. 16, 2011.

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

VA certified that the 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 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 published an interim final rule in the *Federal Register* on August 1, 2011. 76 Fed. Reg. 45,697. VA provided a 30-day comment period and received no comments on the interim final rule. On January 12, 2012, VA adopted the interim final rule as a final rule without change. 77 Fed. Reg. 1872.

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

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

Statutory authorization for the rule

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