



United States
General Accounting Office
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Office of the General Counsel

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August 8, 1996

The Honorable Alfonse D'Amato
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable James A. Leach
Chairman
The Honorable Henry B. Gonzalez
Ranking Minority Member
Committee on Banking and Financial Services
House of Representatives

Subject: Department of Housing and Urban Development: Single Family Mortgage Insurance; Loss Mitigation Procedures

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 Housing and Urban Development (HUD), entitled "Single Family Mortgage Insurance; Loss Mitigation Procedures" (RIN: 2502-AG72). We received the rule on July 25, 1996. It was published in the Federal Register as an interim rule on July 3, 1996. 61 Fed. Reg. 35,014.

Enclosed is our assessment of HUD's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that HUD complied with the applicable requirements.

The interim rule eliminates the Mortgage Assignment Program and provides alternative procedures to foreclosure for mortgagors in default such as special forbearance, loan modifications, and deeds in lieu of foreclosure. The rule provides for recompense to the mortgagees for using these alternative procedures and provides for payment to the mortgagee of a partial claim which would be applied to the arrearage. As a result of these procedures, the Department estimates an annual net savings of \$545 million. Under the rule, HUD may also accept an assignment of

a mortgage which has been recast or modified to cure the default, but where repooling of the loan is not possible. HUD reports that such circumstances should be rare.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to HUD is Judy England-Joseph, Director, Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-5167.

Robert P. Murphy
General Counsel

cc: Mr. Nelson A. Diaz
General Counsel
Department of Housing and Urban Development

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
ENTITLED
"SINGLE FAMILY MORTGAGE INSURANCE; LOSS MITIGATION PROCEDURES"
(RIN: 2502-AG72)

(i) Cost-benefit analysis

The Agency performed an economic analysis dated May 31, 1996. That document analyzes the various loss mitigation procedures promulgated in the interim rule and concludes that HUD will realize an annual net saving of \$545 million from implementation of the interim rule.

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

Pursuant to 5 U.S.C. § 605(b), the Secretary has certified that the interim rule will not have a significant economic impact on a substantial number of small entities. Such certification was published in the Federal Register, 61 Fed. Reg. 35017. As a consequence, HUD was not required to prepare either an initial or a final regulatory flexibility analysis under sections 603 and 604 of the Act, and sections 607 and 609 are not applicable.

According to a HUD representative, HUD's section 605(b) statement and certification were not separately provided to the Chief Counsel for Advocacy of the Small Business Administration. Rather, publication in the Federal Register was treated as providing notice to the SBA. The SBA has not objected to this procedure.

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

According to the agency the rule will not result in expenditures of \$100 million in any year by either State, Local or Tribal governments in the aggregate or by the private sector. In addition, the rule neither affects small governments nor contains a significant intergovernmental mandate. Consequently the rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under Acts and Executive orders

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

The Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134 directed the Department to issue interim regulations within 30 days of the date of enactment. As a consequence, the notice and comments procedures in 5 U.S.C. § 553 were impracticable. Nonetheless, the Department specifically requested comments from interested persons, which are due by September 3, 1996. An agency official has advised that HUD will subsequently issue final regulations.

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

The Department has requested, but has not yet received an OMB approval of the information collection requirements of the rule. In the preamble to the rule, HUD states that it may not conduct or sponsor and a person is not required to respond to a collection of information until OMB has issued the control number.

Statutory authorization for the rule

The statutory requirement to issue these interim regulations is contained in the Balanced Budget Downpayment Act, Pub. L. 104-99, January 26, 1996.

Executive Order No. 12866

HUD reports that the interim rule and the accompanying economic analysis were reviewed and approved by OMB as required by E.O. 12866. HUD received the approval from OMB on June 10, 1996 and no changes were made.

Executive Order No. 12612

HUD states that the interim rule will not have a substantial, direct effect on the States or on the relationship between the federal government and the States or on the distribution of power or responsibilities among various levels of government because the interim rule primarily involves relationships between HUD and private entities.

Executive Order No. 12606

HUD reports that the interim rule will have only an indirect impact on family formation, maintenance, and general well-being and that such impact will be beneficial because it will assist mortgagors in maintaining ownership of their properties. In the preamble, HUD states that no further review is necessary.

National Environmental Policy Act of 1969.

A finding of no significant impact on the environment has been made by HUD in accordance with its regulations implementing the National Environmental Policy Act of 1969.