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Office of the General Counsel

B-278718

December 9, 1997

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 November 25, 1997. It was published in the Federal Register as a final rule on November 6, 1997. 62 Fed. Reg. 60124.

This rule implements as final the interim rule, which was published on July 3, 1996 (61 Fed. Reg. 35014) and which was the subject of our major rule report dated August 8, 1996. Single Family Mortgage Insurance; Loss Mitigation Procedures, B-272940, GAO/OGC-96-33.

The final rule eliminates the Mortgage Assignment Program and provides that HUD may (1) recompense mortgagees for using mortgage foreclosure alternatives, such as special forbearance, loan modifications, deeds in lieu of foreclosure; (2) pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage; and (3) accept assignment of a mortgage which the mortgagee has modified to cure the default.

Enclosed is our assessment of HUD'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 indicates that HUD complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Housing and Urban Development is Judy England-Joseph, Director for Housing and Community Development Issues. Mrs. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy  
General Counsel

Enclosure

cc: Gail W. Laster  
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  
ENTITLED  
"SINGLE FAMILY MORTGAGE INSURANCE--  
LOSS MITIGATION PROCEDURES"  
(RIN: 2502-AG72)

(i) Cost-benefit analysis

From the record before our Office, it appears that HUD did not conduct a new cost-benefit analysis for the final rule but relied on the economic analysis, dated May 31, 1996, which it performed in the course of issuing the interim rule. That analysis showed that HUD would realize an annual net savings of \$545 million from implementation of the rule.

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

The Secretary has 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

The final rule will not impose a federal intergovernmental or private sector mandate, as defined in 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 final rule was issued following a finding that using the notice and comment procedures found at 5 U.S.C. § 553 were impracticable. This finding was based on the requirement that HUD issue interim regulations within 30 days of the date of enactment of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134. On July 3, 1996, HUD published an interim rule with a request for comments in the Federal Register. 61 Fed. Reg. 35014.

However, prior to the issuance of the final rule, HUD considered the 13 comments received in response to the interim rule and discusses these comments and actions it took as result in the preamble to the final rule.

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

The final rule contains an information collection requirement which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The requirement has been submitted to OMB for approval with the information required by the Paperwork Reduction Act. When approved, HUD will publish the OMB-assigned control number. Until that time, no information collection can be conducted.

## Statutory authorization for the rule

The issuance of the final rule was authorized by section 407 of the Balanced Budget Downpayment Act, Pub. L. 104-99, January 26, 1996. 12 U.S.C. § 1715u.

## Executive Order No. 12866

While the interim rule was reviewed by the Office of Management and Budget under Executive Order No. 12866, this final rule was not reviewed by OMB.

## Other statutes and executive orders

HUD has found that the final rule will not have a significant impact on the environment under the National Environmental Policy Act nor, as required by Executive Order No. 13045, pose an environmental health risk or safety risk to children. Also, there is no substantial direct effect on states or their political subdivisions as discussed in Executive Order No. 12612 regarding Federalism.