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March 18, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of Housing and Urban Development: Emergency Homeowners' Loan 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 Housing and Urban Development (HUD), entitled “Emergency Homeowners' Loan Program” (RIN: 2502-AI97). We received the rule on March 4, 2011. It was published in the *Federal Register* as an interim rule on March 4, 2011. 76 Fed. Reg. 11,946.

The interim rule reinstates, with certain modifications, regulations that HUD formerly published to serve as the framework by which emergency relief may be provided to homeowners experiencing temporary involuntary loss of employment or underemployment resulting in a substantial reduction in income due to adverse economic conditions, and who consequently are financially unable to make full mortgage payments.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. sect. 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. sect. 808(2). HUD stated that since this rule provides for emergency relief to unemployed

and underemployed homeowners, but further provides that such relief is available only through September 30, 2011, it would be contrary to the public interest to delay the availability of emergency relief for a period of 60 days. HUD abbreviated the delay in effective date, and the interim rule will be effective 30 days after date of publication, on April 4, 2011.

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 of the procedural steps taken indicates that HUD 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: Camille E. Acevedo
Associate General Counsel for
Legislation and Regulations
Department of Housing and
Urban Development

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ENTITLED
"EMERGENCY HOMEOWNERS' LOAN PROGRAM"
(RIN: 2502-AI97)

(i) Cost-benefit analysis

HUD performed a cost-benefit in conjunction with the interim rule. The benefits of the program authorized by the interim rule include the avoidance of costs associated with foreclosure by lenders, homeowners facing foreclosure, neighbors of the foreclosed property, and local governments. Overall, HUD estimates the benefits to be between \$1.7 billion and \$3.4 billion, offset by the costs of administration, namely selecting participants (\$87.3 million) and servicing program loans (\$7.4 million to \$11.3 million), and up to \$23.96 million of incremental costs of foreclosure to lenders caused by borrowers assisted by the program who subsequently default anyway. HUD additionally states that participants in the program receive a transfer ranging from \$28.32 million to \$43.3 million, which is equal to the government's cost of borrowing the funds. HUD calculated the benefits, costs, and transfers assuming that a range of 22,546 and 34,474 homeowners receive loans through the program.

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

The Regulatory Flexibility Act requires agencies to perform a final regulatory flexibility analysis whenever a final rule is being promulgated after the agency was required to issue a notice of proposed rulemaking. 5 U.S.C. § 604(a). Because no notice of proposed rulemaking was required for the interim rule, the requirement to prepare a final regulatory flexibility analysis does not apply.

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

HUD states that the interim rule will not impose any federal mandates on any state, local, or tribal governments or the private sector.

(iv) Other relevant information or requirements under acts and executive orders

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

HUD issued this rule as an interim rule. Under section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency for good cause, finds

that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. HUD determined that it would be impracticable and contrary to the public interest to delay putting the provisions of this interim regulation in place until a public notice and comment process was completed. Additionally, HUD states that prior notice and comment in this situation is impracticable given the statutory deadline that HUD must enter into binding agreements with approved homeowners no later than September 30, 2011. Given the statutory deadline, HUD believes homeowners who HUD could help under this program may be victims of foreclosure if the program is not commenced as quickly as possible. HUD is soliciting comments on the interim rule, and states that if a commenter, participating lender, eligible borrower, or potential eligible borrower identifies an aspect of the program for which a change would help facilitate assistance to eligible homeowners or provide further protections against waste, fraud, and abuse, HUD will make the necessary change. Further, if funding is provided for the program beyond fiscal year 2011, HUD will consider comments received in its reevaluation of the program, following this first year of reactivation, and make such changes based on public comment and the experience of administering the program in fiscal year 2011.

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

The interim rule does not address the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by the Emergency House Act of 1975, Pub. L. No. 94-50, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1496.

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

The interim rule was reviewed by the Office of Management and Budget under the Order. The interim rule was determined to be economically significant.

Executive Order No. 13,132 (Federalism)

HUD determined that the interim rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments, nor preempt state law within the meaning of the Order.