



United States Government Accountability Office
Washington, DC 20548

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August 8, 2012

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John Kline
Chairman
The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Education: Final Priorities, Requirements, Definitions, and Selection Criteria—Teacher Incentive Fund (TIF) 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 Education (Education), entitled “Final Priorities, Requirements, Definitions, and Selection Criteria—Teacher Incentive Fund (TIF) Program” (RIN: 1810-AB12). We received the rule on July 24, 2012. It was published in the *Federal Register* as a notice on June 14, 2012. 77 Fed. Reg. 35,758.

The notice announces priorities, requirements, definitions, and selection criteria under the Teacher Incentive Fund program. Education may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year 2012, and later years.

The notice has an effective date of July 16, 2012. 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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and comment 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). In the case of this notice, Education determined that because it must award the funds to

qualified applicants by September 30, 2012, or the funds will lapse, the 60-day delay is impracticable and contrary to the public interest. Therefore, Education found good cause to waive the 60-day delay in effective date.

Enclosed is our assessment of Education'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 Education 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: Michael Gross
Assistant General Counsel for
Regulatory Services
Department of Education

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
"FINAL PRIORITIES, REQUIREMENTS, DEFINITIONS, AND SELECTION
CRITERIA—TEACHER INCENTIVE FUND (TIF) PROGRAM"
(RIN: 1810-AB12)

(i) Cost-benefit analysis

Education performed a cost-benefit analysis in conjunction with the notice. Education believes that the costs imposed by the notice are largely limited to the paperwork burden of preparing an application, as discussed below under the Paperwork Reduction Act. Education believes that the notice will result in the selection of high-quality applications to implement activities that will improve the quality of teaching and educational administration. Education also believes that the benefits of implementing the priorities and requirements justify any associated costs. Education states that its FY 2012 appropriation provides for new awards totaling \$284.5 million.

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

Education certified that the notice 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 notice does not address the Unfunded Mandates Reform Act (UMRA). The UMRA applies to rules that include any federal mandate that may result in expenditure by state, local, or tribal governments, in the aggregate, of \$100 million or more. The notice describes the priorities, requirements, definitions, and selection criteria that applicants must provide in order to receive grant awards under the Teacher Incentive Fund program.

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

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

Education published a notice of proposed rulemaking in the *Federal Register* on February 29, 2012. 77 Fed. Reg. 12,257. Education received comments from

32 parties, and Education responded to those comments in the final rule. 77 Fed. Reg. 35,758.

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

The notice contains information collection requirements under the Paperwork Reduction Act. Education estimated that each applicant will spend approximately 248 hours of staff time to address priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances, and estimated that Education will receive approximately 120 applications. The total estimated cost for all applicants is \$892,800. The information collection requirement has been assigned Office of Management and Budget (OMB) control number 1810-0700.

Statutory authorization for the rule

The notice is authorized by the Department of Education Appropriations Act, 2012, Pub. L. No. 112-74, Div. F, Title III, 125 Stat. 786, 1090 (Dec. 23, 2011).

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

Education determined that the notice is economically significant and subject to review by OMB.

Executive Order No. 13,132 (Federalism)

Education determined that the notice will not unduly interfere with state, local, or tribal governments in the exercise of their governmental functions.