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United States Government Accountability Office
Washington, DC 20548

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June 4, 2009

The Honorable Edward M. Kennedy
Chairman
The Honorable Michael B. Enzi
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable Howard P. “Buck” McKeon
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Education (Department), entitled “Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program” (RIN: 1840-AC96). We received the rule on May 20, 2009. It was published in the *Federal Register* as an “interim final rule; request for comments” on May 1, 2009. 74 Fed. Reg. 20,210.

The interim final rule amends the regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. As required by recent amendments to the Higher Education Act (HEA) of 1965, the interim final rule makes ACGs and National SMART Grants available to eligible non-citizens and students enrolled at least half-time and provides that maximum awards for part-time students be proportionally reduced consistent with the requirements in the Federal Pell Grant Program and that grant awards be based on a student’s grade level rather than academic year. The interim final rule authorizes the award of ACGs for students enrolled in a 1- or 2-year

certificate program at a degree-granting institution and allows students who were once enrolled in an undergraduate program as part of a secondary school program of study to receive a first-year ACG if the student is otherwise eligible. The interim final rule implements three additional program options by which students can qualify for a National SMART Grant as created by the amendments to HEA. Finally, the interim final rule makes changes to the method by which secondary school programs of study are determined to be rigorous, while maintaining rigorous programs previously recognized in regulations.

The interim final rule also amends the regulations in the Student Assistance General Provisions, and the regulations for the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and the Federal Pell Grant Program to implement conforming changes based on the statutory amendments to the ACG and National SMART Grant programs.

Enclosed is our assessment of the Department'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 the Department 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: Elizabeth A.M. McFadden
Assistant General Counsel
Division of 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
"STUDENT ASSISTANCE GENERAL PROVISIONS; TEACHER EDUCATION
ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH)
GRANT PROGRAM; FEDERAL PELL GRANT PROGRAM; ACADEMIC
COMPETITIVENESS GRANT PROGRAM AND NATIONAL SCIENCE AND
MATHEMATICS ACCESS TO RETAIN TALENT GRANT PROGRAM"
(RIN: 1840-AC96)

(i) Cost-benefit analysis

The Department of Education (Department) prepared an accounting statement showing the classification of the expenditures associated with the interim final rule. The Department estimates that the interim final rule will increase federal grant payments to students by \$448 million.

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

The Secretary certified that these interim final regulations will not have a significant economic impact on a substantial number of small entities. While a significant percentage of the schools participating in the ACG and National SMART Grant programs meet the definition of "small entities," the interim final regulations do not impose significant new costs on these entities.

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

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare an analysis before promulgating any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 2 U.S.C. 1532(a). The Department did not issue a notice of proposed rulemaking in conjunction with this interim final rule; therefore, the Department was not required to prepare an Unfunded Mandates Reform analysis.

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

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

The Department determined that it would be impracticable to conduct notice-and-comment rulemaking in time to implement these changes for the 2009-2010 award

year. The Department requests public comments on the interim final rules and will publish a final rule after a consideration of public comments.

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

The interim final regulations contain information collection requirements under the Act, and have been submitted to the Office of Management and Budget (OMB) for its review.

The changes regarding student eligibility to receive an ACG or National SMART Grant will result in an increase in the burden hours associated with the programs through the Common Origination and Disbursement (COD) System. The Department estimates that the interim final rule will increase the burden for institutions of higher education by 12,412 hours, under a collection already approved and assigned OMB Control Number 1845-0039.

The changes regarding reporting of rigorous secondary school programs of study will result in an increased burden for states, private high schools, home schools, and individuals of 18,280 hours. This collection of information has not yet been assigned an OMB Control Number.

Statutory authorization for the rule

The interim final regulations are authorized by the Higher Education Act of 1965, as amended by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA), Pub. L. 110-227, and the Higher Education Opportunity Act of 2008 (HEOA), Pub. L. 110-314.

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

The interim final rule has been determined to be economically significant under the Order and subject to OMB review. The Department performed a regulatory analysis as required by the Order.

Executive Order No. 12,372 (Intergovernmental Review of Federal Programs)

The Department provided early notification of its specific plans and actions for this program in the interim final rule, and as required by the Executive Order will rely on state and local processes for the state and local government coordination and review in order to foster an intergovernmental partnership and a strengthened federalism.