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Washington, DC 20548

B-321081

November 10, 2010

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

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

Subject: *Department of Education: High School Equivalency Program and College Assistance Migrant Program, The Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate 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 “High School Equivalency Program and College Assistance Migrant Program, The Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program” (RIN: 1840-AD01). We received the rule on October 15, 2010. It was published in the *Federal Register* as a final rule on October 26, 2010. 75 Fed. Reg. 65,712.

The final rule amends the regulations, and establishes new regulations, for the High School Equivalency Program and College Assistance Migrant Program; the Federal TRIO programs (which include Training program for Federal TRIO programs, Talent Search, Educational Opportunity Centers, Upward Bound, Student Support Services, and the Ronald E. McNair Postbaccalaureate Achievement programs); and the Gaining Early Awareness and Readiness for Undergraduate program. The final rule is needed to implement provisions of the Higher Education Opportunity Act of 2008.

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: Elizabeth A.M. McFadden
Assistant General Counsel for
Regulatory Services
Office of the General Counsel
Department of Education

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
"HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE
MIGRANT PROGRAM, THE FEDERAL TRIO PROGRAMS, AND
GAINING EARLY AWARENESS AND READINESS
FOR UNDERGRADUATE PROGRAM"
(RIN: 1840-AD01)

(i) Cost-benefit analysis

Education determined that the potential costs associated with the final rule are those resulting from statutory requirements and those determined by Education as necessary for administering the program effectively and efficiently. Education determined that the benefits of the regulation, which include \$1.233 billion in grant funds from the federal government to institutions of higher education, public and private agencies and organizations, and secondary schools, justify the costs.

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

Education certified that the final rule will not have a significant 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 expenditures by state, local, or tribal governments, in the aggregate, of \$100 million or more. The final rule describes a grant program, which is not mandatory, and the only expected costs to states are the costs associated with the paperwork burden, which is far below the \$100 million threshold.

(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 on March 23, 2010. 75 Fed. Reg. 13,814. Education received 455 comments on the proposed rule. Education responded to those comments in the final rule. 75 Fed. Reg. 65,712.

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

The final rule contains information collection requirements under the Act, and the Department of Education will submit a copy of the relevant sections to the Office of Management and Budget (OMB) for review.

Recent grant application packages for the Federal TRIO programs—which include Training program for Federal TRIO programs (Training), Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB), Student Support Services (SSS), and the Ronald E. McNair Postbaccalaureate Achievement (McNair) programs—have been or will be discontinued, and new application packages for these programs will be developed prior to their next competitions and will reflect the regulatory changes included in these final regulations. The changes to the applications will result in a total paperwork burden increase by program as follows:

- Training program - net total burden reduction of 228 hours,
- TS grant - 60 hours,
- EOC program - 20 hours,
- UB program - 80 hours,
- SSS - 66 hours, and
- McNair – 16 hours.

For each new application, a separate 30-day *Federal Register* notice will be published to solicit comments on the new application prior to the next scheduled competition for the program.

Likewise, any regulatory changes applicable to the annual performance reports (APRs) will affect grants awarded under competitions conducted after the enactment of the Higher Education Opportunity Act of 2008. The changes to the APRs will result in a total paperwork burden increase by program as follows:

- Training program - no change,
- TS grant - 7,520 hours,
- EOC program – net total burden reduction of 2,572 hours,
- UB program – 9,144 hours,
- SSS – 9,234 hours, and
- McNair - 1,200 hours.

The matching requirement for GEAR UP grants will increase the burden by 12.5 hours for each GEAR UP applicant, for a total burden increase of 6,250 hours. The Secretary of Education may waive a portion of the matching requirement in response to a written request included in the application or submitted separately, which Education estimates will decrease burden hours by 13,485 hours. Scholarship reporting requirements are estimated to result in a total burden increase of 15,685 hours. Finally, Education estimates that the requirement to respond to the priorities

will increase total burden by 6,250 hours, and requests for a seventh year of funding will result in a total burden increase of 150,000 hours.

Statutory authorization for the rule

The final rule is authorized by the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act of 2008, Pub. L. 110-315.

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

Education considered this final rule to be economically significant under the Executive Order, and the final rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

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