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United States Government Accountability Office  
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November 15, 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: Program Integrity Issues*

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 “Program Integrity Issues” (RIN: 1840-AD02). We received the rule on October 21, 2010. It was published in the *Federal Register* as final regulations on October 29, 2010. 75 Fed. Reg. 66,832. The rule has a stated effective date of July 1, 2011, except for the revision of subpart E of part 668, Verification and Updating of Student Aid Application Information, which has a stated effective date of July 1, 2012.

The final rule amends the regulations for Institutional Eligibility Under the Higher Education Act, the Secretary’s Recognition of Accrediting Agencies, the Secretary’s Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant Programs. Education intends for this rule to improve the integrity in these programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA).

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  
"PROGRAM INTEGRITY ISSUES"  
(RIN: 1840-AD02)

(i) Cost-benefit analysis

The Department of Education (Education) analyzed the costs and benefits of this final rule. Education identified benefits provided in these regulations, including:

- updated administrative procedures for federal student aid programs;
- a definition and process to determine the validity of a student's high school diploma;
- enhanced reliability and security of ability-to-benefit tests;
- an additional option for students to prove ability to benefit by successfully completing college coursework;
- increased clarity about incentive compensation for employees at institutions of higher education;
- reporting of information on program completers for programs leading to gainful employment, including costs, debt levels, graduation rates, and placement rates;
- the establishment of minimum standards for credit hours;
- greater transparency for borrowers participating in the programs offered under written agreements between institutions;
- greater detail about misrepresentation in marketing and recruitment materials;
- a more structured and consistent approach to the development and implementation of satisfactory academic progress policies;
- updated and simplified procedures for verifying Free Application for Federal Student Aid (FAFSA) applicant information;
- updated regulations related to the return of title IV of the Higher Education Act, as amended, (title IV, HEA) funds when a student withdraws;
- harmonization of Direct Loan and Teach Grant disbursement procedures with other title IV, HEA programs; and
- revised disbursement requirements to ensure Federal Pell Grant recipients can access funds in a timely manner.

Education determined that this rule will result in no net costs to the federal government over 2011–2015. Education recognized that many of the provisions implemented through these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. In assessing the potential impact of these regulations, Education recognized that certain provisions are likely to increase workload for some program participants and

that additional workloads are normally expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities.

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

Education determined that this 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

Education did not discuss the Unfunded Mandates Reform Act in the final rule. In its submission to GAO, Education indicated, however, that the Act was not applicable to this rule.

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

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

On June 18, 2010, Education published a notice of proposed rulemaking. 75 Fed. Reg. 34,806. Education further stated that this rule was developed through the use of negotiated rulemaking procedures, although the negotiated rulemaking committee did not reach consensus on the provisions of the proposed rule. In addition, approximately 1,180 parties submitted comments, which Education discussed in the final rule.

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

Education determined that this final rule contains several information collection requirements under the Act. These information collection requirements have Office of Management and Budget (OMB) Control Numbers 1845-0022, 1845-0041, 1845-0049, 1845-NEW1, 1845-NEW2, and 1845-NEW3. In total, these requirements are estimated to increase burden on entities participating in the title IV, HEA programs by 6,010,320 hours. Of this increased burden, 3,862,165 hours are associated with institutions and 9,454 hours with ability to benefit (ATB) test publishers, states, and ATB test administrators. An additional 2,138,701 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information.

Statutory authorization for the rule

Education promulgated this final rule under the authority of sections 1001, 1002, 1003, 1070g, 1071 to 1087-2, 1088, 1091, 1094, 1099b, and 1099c of title 20, and section 3675 of title 38, United States Code.

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

Education determined that this rule will have an annual effect on the economy of more than \$100 million and therefore is economically significant under the Order and will be reviewed by OMB.