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United States Government Accountability Office
Washington, DC 20548

B-318974

November 17, 2009

The Honorable Tom Harkin
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 John Kline
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: General and Non-Loan Programmatic 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 “General and Non-Loan Programmatic Issues” (RIN: 1840-AC99). We received the rule on November 2, 2009. It was published in the *Federal Register* as “final regulations” on October 29, 2009, with an effective date of July 1, 2010, and an early implementation date, at the discretion of participating institutions, of November 1, 2009. 74 Fed. Reg. 55,902.

The final regulations amend regulations for institutional eligibility under the Higher Education Act of 1965, the Student Assistance General Provisions, the Federal Work-Study (FWS) Programs, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Leveraging Educational Assistance Partnership Program (LEAP) to implement various general and non-loan provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA) and other recently enacted legislation.

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 regulation, 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 General Counsel
Department of Education

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
"GENERAL AND NON-LOAN PROGRAMMATIC ISSUES"
(RIN: 1840-AC99)

(i) Cost-benefit analysis

Education has assessed the potential costs and benefits and determined that the benefits justify the costs. Education states that benefits include greater transparency about consumer information and campus safety for prospective and current students at institutions participating in the federal student financial assistance programs, copyright infringement policies, requirements for readmission of service members, explanation of extenuating circumstances under which TEACH Grant service obligations may be excused, requirements for programs serving students with intellectual disabilities, and additional guidelines for federal grant and work-study programs. Education states that costs include requiring regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes in order to implement the statutory provisions. These changes are estimated to increase burden on entities or individuals participating in the federal student assistance programs by 253,718 hours. According to Education, virtually all of the increased burden is associated with institutions. A small amount, 384 hours, is associated with students. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is \$4.7 million.

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

Education certifies that the final regulations 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

In its submission to the Comptroller General, Education did not include an analysis of the final regulations under the Act.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On August 21, 2009, the Secretary published a notice of proposed rulemaking (NPRM) for general and non-loan programmatic issues. 74 Fed. Reg. 42,380. Education received timely comments from more than 113 parties, which are addressed in the final regulations. 74 Fed. Reg. 55,904. For the changes needed in section 668.43, the Secretary found it unnecessary to conduct negotiated rulemaking under section 492 of the HEA and found good cause to forego notice and comment under section 553 of the APA because it was impracticable, unnecessary, or contrary to the public interest.

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

Certain final sections contain information collection requirements. *See* §§ 668.14, 668.18, 668.23, 668.28, 668.41, 668.43, 668.45, 668.46, 668.49, 668.232, 668.233, 686.41, 686.42, 690.63, 690.64, 690.67, 692.21, and 692.100, 692.101, 692.111. Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Statutory authorization for the rule

Education states the final regulations are made under the authority set forth in 20 U.S.C.A. § 1089(c)(2)(A).

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

Education determined this action is “economically significant” because it will have an annual effect on the economy of more than \$100 million.