



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-319086

December 4, 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: Race to the Top Fund*

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 “Race to the Top Fund” (RIN: 1810-AB07). We received the rule on November 19, 2009. It was published in the *Federal Register* as “final priorities, requirements, definitions, and selection criteria” on November 18, 2009. 74 Fed. Reg. 59,688.

The final rule announces priorities, requirements, definitions, and selection criteria for the Race to the Top Fund. The purpose of the Race to the Top Fund, a competitive grant program created under the American Recovery and Reinvestment Act of 2009 (ARRA), is to encourage and reward states that are creating the conditions for education innovation and reform, achieving significant improvement in student outcomes, and implementing ambitious plans in four core education reform areas—enhancing standards and assessments, improving the collection and use of data, increasing teacher effectiveness and achieving equity in teacher distribution, and for turning around struggling schools.

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
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
"RACE TO THE TOP FUND"
(RIN: 1810-AB07)

(i) Cost-benefit analysis

Education states that the costs imposed on states by the notice will be limited to the paperwork burden, as discussed below, and that the benefits conveyed on a state through its receipt of a grant will greatly exceed those costs. The final regulatory action itself is intended to award approximately \$4 billion in support of state and local efforts to implement critical education reform.

(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. This is because the grants are available only to states, and states are not 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 notice describes a voluntary competitive 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 priorities, requirements, definitions, and selection criteria for this program in the *Federal Register* on July 29, 2009. 74 Fed. Reg. 37,804. Education received comments from 1,161 parties on the proposal and responded to those comments in the final priorities, requirements, definitions, and selection criteria. 74 Fed. Reg. 59,688.

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

Education received emergency approval for the information collection requirements described in the notice under Information Collection Reference No. 200910-1810-004. Since publication in the *Federal Register*, Education received approval on November 18, 2009, under Information Collection Reference No. 200911-1810-007.

Education estimates that each State Education Agency (SEA) would spend approximately 681 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all 52 SEAs (the 50 states, plus the District of Columbia and Puerto Rico) is an estimated 35,412 hours. Education estimates that the average total cost per hour of the state-level staff who carry out this work to be \$30 per hour, for a total estimated cost for all SEA of \$1,062,360.

Statutory authorization for the rule

The notice is authorized by section 14006 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

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

The notice was deemed economically significant under Executive Order No. 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

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