



441 G St. N.W.
Washington, DC 20548

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July 1, 2013

The Honorable Tom Harkin
Chairman
The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

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

Subject: *Department of Education: William D. Ford Federal Direct Loan 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 “William D. Ford Federal Direct Loan Program” (RIN: 1840-AD13). We received the rule on June 14, 2013. It was published in the *Federal Register* as an interim final rule; request for comments on May 16, 2013. 78 Fed. Reg. 28,954.

The interim final rule amends the regulations governing the William D. Ford Federal Direct Loan Program (Direct Loan Program) to reflect changes made to the program by the Moving Ahead for Progress in the 21st Century Act (MAP-21).¹ Specifically, this interim final rule implements section 100301 of MAP-21, which extends the 3.4 percent interest rate on Direct Subsidized Loans from July 1, 2012, to July 1, 2013, and section 100302 of MAP-21, which ensures that a borrower may not receive Direct Subsidized Loans for more than 150 percent of the published length of the educational program in which the borrower is enrolled. Under the changes made by MAP-21, if the borrower exceeds this Direct Subsidized Loan limit, the borrower also becomes responsible for the accruing interest on the Direct Subsidized Loans.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This interim final rule was received by the Senate on May 14, 2013, and by the House of Representatives on May 15, 2013. 159 Cong. Rec. S3568 (May 16, 2013); 159 Cong. Rec. H2909 (May 22, 2013). It was published in the *Federal Register* on May 16, 2013. The rule has a stated effective date of May 16, 2013. Therefore,

¹ Pub. L. No. 112-141, 126 Stat. 405 (2012).

this rule does not have the required 60-day delay in effective date. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and comment are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. §§ 553(d)(3), 808(2). For this interim final rule Education found good cause to waive the delay in effective date because of statutory deadlines and other requirements and because substantial revenue for the federal government would otherwise be lost. Therefore the 60-day delay in the effective date is not required.

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. Education did not address the Unfunded Mandates Act of 1995 in the interim final rule and indicated in its submission that the requirement to prepare a written statement under the Act did not apply. 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: Hilary Malawer
Deputy 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
"WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM"
(RIN: 1840-AD13)

(i) Cost-benefit analysis

The Department of Education (Education) analyzed the costs and benefits of this interim final rule. Education did not quantify the annual benefits of this rule, but did note that the 150 percent limit may encourage borrowers to complete their programs on-time. Education estimated that the annual costs of this rule to be \$5.21 million (at a 3 percent discount rate) and \$5.31 million (at a 7 percent discount rate). Education also estimated the annualized monetized transfers from affected student loan borrowers to the federal government will be \$212.8 million (at a 3 percent discount rate) and \$237.6 (at a 2 percent discount rate).

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

Education prepared an initial regulatory flexibility analysis for this interim final rule. This analysis included (1) a succinct statement of the objectives of, and legal basis for, the rule; (2) a description of and, where feasible, an estimate of the number of small entities to which the rule will apply; (3) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements; (4) an identification, to the extent practicable, of all relevant federal regulations that may duplicate, overlap, or conflict with this rule; and (5) alternatives considered. In the analysis, Education estimated that the paperwork burden on small entities for the three paperwork requirements will be \$852,234 (\$195 per institution), \$65,953 (\$15 per institution), and \$268,566 (\$62 per institution).

(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 address the Act in the interim final rule. In its submission to us, Education indicated that the Act's requirement to prepare a written statement under section 202 of the Act (15 U.S.C. § 1532) did not apply.

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

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

Education determined that notice-and-comment rulemaking was impractical for this interim final rule because it could not complete those procedures and meet a statutory deadline of July 1, 2013. In addition, Education noted that, contrary to public interest, there would be a substantial loss of revenue for the federal government if these interim final regulations were not implemented until after July 1, 2013. Although Education determined that notice-and-comment rulemaking was impractical and contrary to the public interest for this interim final rule—and so

made the rule effective as of its publication date—the agency has also requested public comment on the interim final rule.

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

Education determined that this interim final rule contains three information collection requirements under the Act and has submitted them to the Office of Management and Budget (OMB) for review. Education estimates that the total increase in burden on borrowers will be 216,677 hours for a cost of \$3,847,185, and the total increase in burden on institutions will be 66,037 hours for a cost of \$1,625,171.

Statutory authorization for the rule

Education promulgated this interim final rule under the authority of sections 1070g and 1087a to 1087j of title 20, United States Code.

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

Education determined that this interim final rule will have an annual effect on the economy of more than \$100 million because the transfers between borrowers who exceed the 150 percent limit and the government total approximately \$3.9 billion over loan cohorts 2013 to 2023. Therefore, this action is economically significant and subject to review by OMB under the Order.