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September 19, 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: Final Priorities, Requirements, Definitions, and Selection Criteria; Race to the Top—District*

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 “Final Priorities, Requirements, Definitions, and Selection Criteria; Race to the Top—District” (RIN: 1810-AB17). We received the rule on September 5, 2013. It was first published in the *Federal Register* as “final priorities, requirements, definitions, and selection criteria” on August 6, 2013. 78 Fed. Reg. 47,980. A correction was included in the *Federal Register* on September 5, 2013. 78 Fed. Reg. 54,588.

This major rule establishes priorities, requirements, definitions, and selection criteria for the Race to the Top—District program. Education designed the Race to the Top—District program to build on the momentum of other Race to the Top competitions by encouraging bold, innovative reform at the local level. The priorities, requirements, definitions, and selection criteria in this rule are similar to those Education used in the FY 2012 competition. The competition will support applicants that demonstrate how they can personalize education for all students in their schools. In that regard, through this competition, Education plans to encourage and reward those local educational agencies (LEAs) or consortia of LEAs that implement the strategies, structures, and systems that Education believes are needed to implement personalized, student-focused approaches to learning and teaching that will produce excellence and ensure equity for all students. The priorities, definitions, requirements, and selection criteria are designed to help LEAs meet these goals.

This major rule has a stated effective date of September 5, 2013. 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 rule was published in the *Federal Register* on August 6, 2013, but

was not received until September 5, 2013. 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). In the case of these final priorities, requirements, definitions, and selection criteria, Education published a correction finding such good cause. 78 Fed. Reg. 54,588 (Sept. 5, 2013). Specifically, Education found that given the large number of applications it expects, the need to provide peers with sufficient time for review, and the need to allow sufficient time for it to make awards, a later due date is not practical and therefore there is good cause to waive the delayed effective date under the CRA.

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. As discussed in the enclosure, Education did not directly address the Regulatory Flexibility Act or the Unfunded Mandates Act in these final priorities, requirements, definitions, and selection criteria. Our review of the procedural steps taken indicates that Education complied with the other 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: Michael Gross
Assistant General Counsel for 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
"FINAL PRIORITIES, REQUIREMENTS, DEFINITIONS, AND
SELECTION CRITERIA; RACE TO THE TOP—DISTRICT"
(RIN: 1810-AB17)

(i) Cost-benefit analysis

The Department of Education (Education) determined that the costs imposed on applicants by these final priorities, requirements, definitions, and selection criteria are limited to the paperwork burden related to preparing an application and the benefits of implementing them would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. In its accounting statement for this major rule, Education found the rule would result in annualized monetary transfers of approximately \$120 million from the federal government to local education agencies (LEAs).

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

Education did not address the requirements of the Act in these final priorities, requirements, definitions, and selection criteria. Education did state it believes the costs of implementation would not be a burden for any eligible applicants, including small entities. As part of its submission to us, Education indicated that it certified that this 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 address the requirements of the Act in these final priorities, requirements, definitions, and selection criteria. In its submission to us, Education indicated that the requirement to prepare a written statement under section 202 of the Act did not apply.

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

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

On April 16, 2013, Education published a notice of proposed priorities, requirements, definitions, and selection criteria. 78 Fed. Reg. 22,451. In response, 43 parties submitted comments and Education responded to the comments in these final priorities, requirements, definitions, and selection criteria.

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

Education determined that these final priorities, requirements, definitions, and selection criteria do not contain any information collection requirements under the Act.

Statutory authorization for the rule

Education promulgated these final priorities, requirements, definitions, and selection criteria under the authority of section 14006 of the American Recovery and Reinvestment Act of 2009,¹ as amended by section 1832(b) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011,² and the Department of Education Appropriations Act, 2012.³

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

Education determined that these final priorities, requirements, definitions, and selection criteria will have an annual effect on the economy of more than \$100 million because more than that amount has been appropriated for Race to the Top, and it anticipates that more than that amount will be awarded as grants. Therefore, Education found that this final action is economically significant under the Orders and subject to review by the Office of Management and Budget.

¹ Pub. L. No. 111-5, div. A, § 14006, 123 Stat. 115, 283–284 (2009).

² Pub. L. No. 112-10, div. B, § 1832(b), 125 Stat. 38, 164 (2011).

³ Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, div. F, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2012, title III, Department of Education Appropriations Act, 2012, 125 Stat. 786, 1090–1103 (2011).