



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

B-331576

November 15, 2019

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

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies*

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 "Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies" (RINs: 1840-AD36, 1840-AD37). We received the rule on October 23, 2019. It was published in the *Federal Register* as final regulations on November 1, 2019. 84 Fed. Reg. 58834. The effective date of the rule is July 1, 2020.

The final rule amends the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility, as well as makes various technical corrections. Specifically, according to Education, this final rule (1) strengthens the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, states, and Education in oversight of institutions participating in the Federal Student Aid programs; (2) establishes "substantial compliance" with regard to recognition criteria as the standard for agency recognition; (3) increases academic and career mobility for students by eliminating artificial regulatory barriers to work in a profession; (4) provides greater flexibility for institutions to engage in innovative educational practices more expeditiously and meet local and national workforce needs; (5) protects institutional autonomy, honors individual campus missions, and affords institutions the opportunity to build campus communities based upon shared values; (6) modifies "substantive change" requirements to provide greater flexibility to institutions to innovate and respond to the needs of students and employers, while maintaining strict agency oversight in instances of more complicated or higher risk changes in institutional mission, program mix, or level of credential offered; (7) clarifies Education's accrediting agency recognition process, including accurate recognition of the geographic area within which an agency conducts business; (8) encourages and enables accrediting agencies to support

innovative practices, and provides support to accrediting agencies when they take adverse actions; and (9) modifies the requirements for state authorization to clarify the responsibilities of institutions and states regarding students enrolled in distance education programs and students enrolled in programs that lead to licensure and certification.

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. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Hilary Malawer
Deputy General Counsel for Ethics, Legislative
Counsel and 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
“STUDENT ASSISTANCE GENERAL PROVISIONS,
THE SECRETARY’S RECOGNITION OF ACCREDITING AGENCIES,
THE SECRETARY’S RECOGNITION PROCEDURES FOR STATE AGENCIES”
(RINs: 1840-AD36, 1840-AD37)

(i) Cost-benefit analysis

The Department of Education (Education) stated that the benefits of these regulations include increasing transparency and improving institutional access for students, honoring the autonomy and independence of agencies and institutions, restoring focus and clarity to Education’s agency recognition process, integrating risk-based review into the recognition process, improving teach-outs for students at closed or closing institutions, allowing accrediting agencies to focus greater attention on student learning and the student experience, and restoring public trust in the rigor of the accreditation process and the value of postsecondary education. Education also stated that these regulations significantly reduce the regulatory burden associated with preparing and submitting accrediting agency petitions for recognition or renewal of recognition.

Education also stated that the potential costs associated with these regulations include some burdens associated with required disclosures and the need for accrediting agencies to develop new policies for accreditation, decision making, enforcement of standards, and substantive change in reporting requirements.

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

Education certifies that these final regulations will not have 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 its submission to us, Education indicated that it had not prepared a written statement under section 202 of the Act.

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

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

On June 12, 2019, Education published a proposed rule. 84 Fed. Reg. 27404. Education received 195 comments on the proposed regulations. The agency addressed the comments by grouping major issues according to subject and discussed other substantive issues under the sections of the regulations to which they pertain. However, Education stated that it did not

address minor, non-substantive changes, recommended changes that the law does not authorize it to make, or comments pertaining to operational processes. Education also stated it did not address comments pertaining to issues that were not within the scope of the notice of proposed rulemaking.

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

Education determined that this final rule contains information collection requirements (ICRs) under the Act. Sections 600, 602, and 668 of this final rule contain ICRs and Education submitted a copy of these sections to the Office of Management and Budget for review. Education estimated the burden of each ICR.

Statutory authorization for the rule

Education promulgated this final rule pursuant to sections 1001–1003, 1070g, 1085, 1087, 1088, 1091, 1092, 1094, 1099, 1221-3, and 1231 of title 20, United States Code.

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

Education determined that this final rule is an economically significant action and will have an annual effect on the economy of more than \$100 million because the proposed changes to the accreditation process could increase student access, improve student mobility, and allow for the establishment of more innovative programs.

Executive Order No. 13,132 (Federalism)

Education stated that in its notice of proposed rulemaking it indicated that sections 600, 602, 603, and 668 may have federalism implications, and Education encouraged state and local elected officials to review and provide comments on these final regulations.