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United States Government Accountability Office
Washington, DC 20548

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April 22, 2010

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable John Kline
Ranking 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-AB10). We received the rule on April 8, 2010. It was published in the *Federal Register* as “interim final requirements; request for comments” on April 2, 2010. 75 Fed. Reg. 16,668.

The interim final rule with request for comments amends the final Race to the Top Fund requirements to establish the suggested budget ranges as mandatory funding limits for Phase 2 of the competition. The rule was effective April 2, 2010, and comments must be received by May 3, 2010.

The Congressional Review Act (CRA) generally 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). However, any rule which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Education found good cause to waive the Administrative Procedure Act’s (APA) notice-and-comment rulemaking and delay in effective date requirements due to the short time-frame remaining for obligating funds from the Race to the Top Fund, and this also serves as good cause 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. 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

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-AB10)

(i) Cost-benefit analysis

Education determined that this interim final rule will not impose additional costs to state applicants, grantees, or the federal government. A state applicant may take additional time to create or revise its Race to the Top budget so that it conforms to the required budget range if the state had intended to request more than the maximum in the range. However, Education believes that the benefits outweigh any potential burden that the interim final rule may cause.

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

Education certified that the interim final 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

The interim final rule does not address the Unfunded Mandates Reform Act (UMRA). The UMRA applies to rules that include any federal mandate that may result in expenditure by state, local, or tribal governments, in the aggregate, of \$100 million or more. The interim final rule describes changes to a voluntary competitive grant program, which is not mandatory. Moreover, the only expected costs to state are the costs associated with the paperwork burden, which are 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 waived the notice and comment rulemaking requirements under the APA, because it found that it would be impracticable and contrary to the public interest to conduct notice and comment rulemaking. The interim final rule establishes mandatory budget ranges, which will apply to the Phase 2 Race to the Top Applications due on June 1, 2010. Education chose the application date in order to allow it to award grants by September 30, 2010, because the funds available for Race

to the Top grant awards are required to be obligated by September 30, 2010. For the same reasons, Education has determined that a delay in effective date for this interim final rule would be unnecessary and contrary to the public interest and that good cause exists to waive the requirement for a delayed effective date.

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

The interim final rule contains information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act. Education had previously received emergency approval for the information collection requirements in the final Race to the Top Fund requirements under OMB Control Number 1810-0697. Education will submit a Paperwork Reduction Act Change Worksheet to OMB for this collection that will include the changes described in this interim final rule.

Statutory authorization for the rule

The interim final rule 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 interim final rule was determined by Education to be significant under Executive Order 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

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