



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-319797

June 4, 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: Teacher Incentive 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 “Teacher Incentive Fund” (RIN: 1810-AB08). We received the rule on May 19, 2010. It was published in the *Federal Register* as a “notice of final priorities, requirements, definitions, and selection criteria” on May 21, 2010. 75 Fed. Reg. 28,714. The final rule is effective July 6, 2010.

The final rule establishes priorities, requirements, definitions, and selection criteria under the Teacher Incentive Fund (TIF) program, which will be used in two separate and distinct TIF programs, the Main TIF Competition and the TIF Evaluation competition. The Main TIF competition will provide TIF funding to eligible entities to support their implementation of a performance-based compensation system in accordance with the priorities, the Main TIF competition requirements, the definitions, and the selection criteria in the final rule. The TIF Evaluation competition will provide TIF funding to help pay the costs of implementing the eligible entity’s performance-based compensation system in exchange for an agreement to participate in the national evaluation, in accordance with the priorities, the Main TIF competition requirements, the definitions, and the selection criteria, as well as the Evaluation requirements established in the final rule.

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 that the delay in effective date would be impracticable and contrary to the public interest and waived for good cause, because the delay would leave insufficient time for Education to award the funds authorized by September 30, 2010, as 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. 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
"TEACHER INCENTIVE FUND"
(RIN: 1810-AB08)

(i) Cost-benefit analysis

Education believes that the final priorities, requirements, definitions, and selection criteria outweigh any associated costs. Education believes that the costs imposed on applicants by the final rule will be limited to the paperwork burden related to preparing an application. The benefits of the final rule will be the selection of high-quality applications to implement activities that are most likely to improve the quality of teaching and educational administration. The final rule will result in an annualized monetary transfer of \$437 million from the federal government to states, local educational agencies, and nonprofits.

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

Education certified that the 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 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 final rule describes priorities, requirements, definitions, and selection criteria for a voluntary competitive grant program, which is not mandatory. Moreover, the only expected costs to the states 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 published a notice of proposed priorities, requirements, definitions, and selection criteria in the *Federal Register* on February 26, 2010. 75 Fed. Reg. 8,854. Education received comments on the notice of proposed priorities from 40 commenters, including state educational agencies, local educational agencies,

nonprofit organizations, teachers' unions, universities, professional associations, parents, and other public citizens. Education responded to those comments in the final rule.

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

The final rule contains information collection requirements under the Paperwork Reduction Act, and Education has received approval to submit these requirements to the Office of Management and Budget (OMB) for review under emergency processing. Education estimates that each applicant will spend approximately 248 staff hours to address the requirements and selection criteria, prepare the application and obtain necessary clearances, that they will receive approximately 120 applications for these funds, and that the cost per hour at the applicant level will be \$30 per hour. Education estimates that the total number of hours for all applicants will be 29,760 hours and the total estimated cost for all applicants will be \$892,800.

Statutory authorization for the rule

The final rule is authorized by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Public Law 110-161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Public Law 111-117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Public Law 111-5.

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

The final rule was determined by Education to be economically 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 the final rule does not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.