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September 6, 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: Federal Pell Grant 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 entitled “Federal Pell Grant Program” (RIN: 1840-AD11). We received the rule on August 22, 2013. It was published in the *Federal Register* as a final rule on July 2, 2013. 78 Fed. Reg. 39,613.

The final rule implements provisions of the Higher Education Act of 1965 (HEA), as amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011. The Secretary adopts as final, without change, the interim final rule published on May 2, 2012, that amended regulations for the Federal Pell Grant program, to prohibit a student from receiving two consecutive Federal Pell Grants in a single award year.

The final rule has an effective date of July 2, 2013. The Congressional Review Act 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, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, in the final rule and as stated in detail in the interim final rule, Education notes that because these final regulations merely reflect statutory changes and remove obsolete regulatory provisions and, in the case of § 690.64, protect students from receiving reduced amounts of Pell Grant funds, there is good cause for making the final rule effective on the day it was published.

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: Hilary Malawer
Acting Assistant General Counsel for
Regulatory Services, Office of the General Counsel
Department of Education

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
"FEDERAL PELL GRANT PROGRAM"
(RIN: 1840-AD11)

(i) Cost-benefit analysis

In accordance with Executive Order 12,866, the Department of Education assessed the potential costs and benefits, both quantitative and qualitative, of the final regulatory action. Education discussed the potential costs and benefits of these regulations in the interim final rule. 77 Fed. Reg. 25,895.

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

Education states that the final regulations affect institutions that participate in title IV, HEA programs, and individual Pell Grant recipients. According to Education, the effect of the elimination of two Pell Grants in one year will depend on the extent students replace the funds from other sources or change their academic plans, the distribution of recipients of a second Pell Grant, and the alternative use of the funds. Education notes that the Final Regulatory Flexibility Analysis presents an estimate of the effect on small institutions of the statutory changes implemented through these final regulations. In the interim final rule, Education welcomed comments about the estimates of the costs and benefits of the changes implemented in these final regulations. While some commenters questioned the benefits of Pell Grants or the effect of the changes on transfer students, Education states that no comments were received about the specific estimates of the effect on small entities presented in the Initial Regulatory Flexibility Analysis. 77 Fed. Reg. 25,895-97.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to the Comptroller General, Education did not include an analysis of the final rule under the Act.

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

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

Education states that in response to the Secretary's invitation, 10 parties submitted comments on the interim final rule. Education notes that an analysis of the comments received since publication of the interim final rule is included in the final rule. Education states that, generally, it does not address technical and other minor changes or suggested changes the law does not authorize the Secretary to make.

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

Education states that these final regulations do not create any information collection requirements. With the removal of §§ 690.63(h) and 690.67 and the revision of § 690.64, due to the statutory changes, Education notes that the paperwork burden associated with those sections are also removed. According to Education, this change results in the discontinuation of information collection 1845–0098 and, therefore, the elimination of 109,605 burden hours associated with that collection.

Statutory authorization for the rule

Education states that the final rule is authorized in compliance with section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112–10), which repealed section 401(b)(5) of the Higher Education Act.

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

Education states that the final rule is economically significant and subject to review by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, Education did not include an analysis of the final rule under the Order.