



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

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November 17, 2014

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: Program Integrity: Gainful Employment*

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 “Program Integrity: Gainful Employment” (RIN: 1840-AD15). We received the rule on October 31, 2014. It was published in the *Federal Register* as final regulations on October 31, 2014, with an effective date of July 1, 2015. 79 Fed. Reg. 64,890.

The final rule establishes measures for determining whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation, and the conditions under which these educational programs remain eligible under the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). Education intends this rule to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation (GE programs), but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default. Specifically, this rule establishes (1) an accountability framework for GE programs that defines what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which Education will evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that will increase the quality and availability of information about the outcomes of students enrolled in GE programs.

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. Other than the Unfunded Mandate Act as discussed in the enclosure, 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: Paul Riddle
Acting 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
"PROGRAM INTEGRITY: GAINFUL EMPLOYMENT"
(RIN: 1840-AD15)

(i) Cost-benefit analysis

The Department of Education (Education) assessed the potential costs and benefits, both quantitative and qualitative, of this final rule and determined that the benefits justify the costs. Education expects the potential primary benefits of this rule to be: (1) improved and standardized market information about GE programs that will increase the transparency of student outcomes for better decision making by students, prospective students, and their families, the public, taxpayers, and the government, and institutions, leading to a more competitive marketplace that encourages improvement; (2) improvement in the quality of programs, reduction in costs and student debt, and increased earnings; (3) elimination of poor performing programs; (4) better return on educational investment for students, prospective students, and their families, as well as for taxpayers and the federal government; (5) greater availability of programs that provide training in occupational fields with many well-paying jobs; and (6) for institutions with high-performing programs, potential growth in enrollments and revenues resulting from the additional market information that will permit those institutions to demonstrate to consumers the value of their GE programs.

Education believes that many students in failing and zone programs will be able to transfer to passing programs, new programs, or non-GE programs that provide equivalent training, but Education also recognizes that at least some students may suffer costs in the short-term as they are temporarily left without transfer options. Education expects that many of these students will re-enter postsecondary education later but understands that some students may not continue. Institutions will incur costs as they make changes needed to comply with the rule, including costs associated with the reporting and disclosure requirements. These costs could include: (1) training of staff for additional duties, (2) potential hiring of new employees, (3) purchase of new software or equipment, and (4) procurement of external services, the burden of which is discussed below in the Paperwork Reduction Act discussion.

As students drop out of postsecondary education or remain in programs that lose eligibility for federal student aid, Education anticipates a transfer of federal student aid from those students to the federal government. Under the primary budget scenario, the annualized amount of this transfer of title IV, HEA program funds over the fiscal year (FY) 2014 to FY 2024 budget window is \$423 million. Additionally, as students change programs based on program performance and disclosures, revenues and expenses associated with students will transfer between postsecondary institutions. Education estimates that approximately \$2.55 billion (at a 7 percent discount rate) or \$2.52 billion (at a 3 percent discount rate) in title IV, HEA Pell Grant and loan volume will transfer from zone, failing, and ineligible programs to passing programs on an annualized basis. These amounts reflect the anticipated high level of initial transfers as institutions adapt to the proposed regulations and failing and zone programs eventually lose eligibility for title IV, HEA program funds. Education expects the title IV, HEA program funds associated with student transfers related to this final rule to decline in future years. Additionally, Education estimates that \$1.24 billion (7 percent discount rate) or \$1.22 billion (3 percent discount rate) in instructional expenses will transfer among postsecondary institutions.

Education estimates, under the primary student and program response scenario, this final rule will result in reduced costs of \$4.3 billion due to Pell Grants not taken between FY 2014 and FY 2024. The estimated reductions in Pell Grant costs will be slightly offset by approximately \$695 million in reduced net returns associated with lower Federal Direct Unsubsidized and PLUS loan volume. Accordingly, Education estimates the net budget impact of the regulations will be \$4.2 billion over the FY 2014 to FY 2024 budget window.

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

In its submission to us, Education indicated that it had certified that the rule would not have a significant economic effect on a substantial number of small entities and that the agency did not prepare a final Regulatory Flexibility Analysis. However, the final rule contains a Regulatory Flexibility Analysis including (1) a description of the reasons the agency action was considered, (2) a succinct statement of the objectives of, and legal basis for, the regulation, (3) a description of, and where feasible, an estimate of the number of small entities to which the regulation applies, (4) an identification, to the extent practical, of all relevant federal regulations that may duplicate, overlap, or conflict with the regulations, and (5) alternatives considered.

(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 Act in the final rule. In its submission to us, Education indicated that the requirement to prepare a written statement under section 202 of the Act was not applicable.

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

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

On March 25, 2014, Education published the proposed rule. 79 Fed. Reg. 16,426. Education received approximately 95,000 comments on the proposed rule, which it discussed in the final rule.

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

Education determined that this final rule contains information collection requirements under the Act. Education identified 12 provisions of the final rule that include information collection requirements that were reviewed by the Office of Management and Budget (OMB) under three OMB Control Numbers: 1845-0121, 1845-0122, and 1845-0123, with a total combined burden of 6,925,627 hours.

Statutory authorization for the rule

Education promulgated this final rule under the authority of sections 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c of title 20, United States Code.

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

Education determined that this final rule is economically significant under the Order because it will have an annual effect on the economy of \$100 million or more.