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September 6, 2016

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

The Honorable John Kline
Chairman
The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Employment and Training Administration, and Department of Education: Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule*

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 Labor, Employment and Training Administration (ETA) and Department of Education (ED) (collectively, Departments) entitled "Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule" (RINs: 1205-AB74; 1830-AA21). We received the rule on August 19, 2016. It was published in the *Federal Register* as a final rule on August 19, 2016. 81 Fed. Reg. 55,792.

The final rule implements jointly administered activities authorized by title I of the Workforce Innovation and Opportunity Act (WIOA) signed into law on July 22, 2014 (Joint WIOA Final Rule). Through these regulations, the Departments implement workforce education and employment system reforms and strengthen the nation's public workforce development system to provide increased economic opportunity and make the United States more competitive in the 21st Century evolving labor market. This Joint WIOA Final Rule provides guidance for state and local workforce development systems that increase the skill and credential attainment, employment, retention, and earnings of participants, especially those with significant barriers to employment, thereby improving the quality of the workforce, reducing dependency on public benefits, increasing economic opportunity, and enhancing the productivity and competitiveness of the nation.

Enclosed is our assessment of the Departments' 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 the Departments 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
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Department of Education

Portia Wu
Assistant Secretary for Employment and Training
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REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
EMPLOYMENT AND TRAINING ADMINISTRATION;
DEPARTMENT OF EDUCATION
ENTITLED
“WORKFORCE INNOVATION AND OPPORTUNITY ACT;
JOINT RULE FOR UNIFIED AND COMBINED STATE PLANS,
PERFORMANCE ACCOUNTABILITY, AND THE ONE-STOP SYSTEM
JOINT PROVISIONS; FINAL RULE”
(RINs: 1205-AB74; 1830-AA21)

(i) Cost-benefit analysis

The Department of Labor, Employment and Training Administration (ETA) and the Department of Education (ED) (collectively, Departments) performed a cost benefit analysis in the final rule. The Departments estimate that the final rule will generate benefits (including some that take the form of cost reductions). Over a 10-year period, this final rule is estimated to have an undiscounted total cost of \$626.8 million. This is equivalent to an estimated annual cost of \$62.7 million. According to the Departments, with 7 percent discounting over the 10-year period, the final rule will result in an estimated total cost of \$495.2 million. This is equivalent to an estimated annualized cost of \$70.5 million (with 7 percent discounting). As stated in the final rule, the largest contributor to the total cost of the rule is the implementation of performance accountability requirements contained in sec. 116 of the Workforce Innovation and Opportunity Act (WIOA). The largest of these costs include the development and updating of state performance accountability systems, followed by performance reporting requirements, and adjusting levels of performance.

The Departments were unable to quantify several important benefits to society due to data limitations and lack of existing data or evaluation findings. The Departments qualitatively described the benefits related to increased alignment of training with local labor markets using economic, education, and workforce data. In addition, based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies the Departments sponsored), the Departments identified the following societal benefits: (1) training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) state performance accountability measures, combined with the Workforce Development Board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Departments identified several channels through which these benefits might be achieved, including: (1) better information about training providers enables workers to make more informed choices about programs to pursue, and (2) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above. In addition, the Departments qualitatively described an ancillary benefit to the ETA-administered core programs that is expected to result from the integration of ETA program participant records. While the integration of these participant records is not required by WIOA or the implementing regulations, according to the Departments, it is highly encouraged.

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

The Departments certified that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in very large measure, by the fact that small entities are already receiving financial assistance under the Workforce Investment Act of 1998 program and will likely continue to do so under the WIOA program as articulated in the final rule. The Departments indicate that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on state and local workforce development boards (WDBs) will be fully financed through federal transfer payments to states. The Departments have highlighted costs that are new to WIOA implementation in the final rule. Therefore, the Departments expect that this WIOA final rule will have no cost impact on 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 Departments concluded that the Joint WIOA Final Rule contained no unfunded federal mandates to include either a federal intergovernmental mandate or a federal private sector mandate.

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

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

On April 16, 2015, the Departments published a joint Notice of Proposed Rulemaking (NPRM) in the *Federal Register*, the Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions (the Joint WIOA NPRM). 80 Fed. Reg. 20,574. In addition, the Departments published four other NPRMs related to WIOA on April 16, 2015. The second NPRM is the Workforce Innovation and Opportunity Act (80 Fed. Reg. 20,690); the third NPRM is the Programs and Activities Authorized by the Adult Education and Family Literacy Act (title II of the Workforce Innovation and Opportunity Act) (80 Fed. Reg. 20,668); the fourth is the State Vocational Rehabilitation Services program; State Supported Employment Services program; Limitations on Use of Subminimum Wage (80 Fed. Reg. 21,059); and the fifth is the Workforce Innovation and Opportunity Act, Miscellaneous Program Changes (80 Fed. Reg. 20,688). During the 60-day public comment period, the Departments received a total of 546 public comments on the Joint WIOA NPRM. In addition to these comments, the Departments state that they also considered relevant public comments on the DOL and ED program-specific NPRMs. The Departments summarized and responded to comments in the final rule.

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

In accordance with PRA, the Departments submitted two information collection requests (ICRs) to the Office of Management and Budget (OMB) when the NPRM was published: (1) Workforce Innovation and Opportunity Act Common Performance Reporting, and (2) Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act, Wagner-Peyser Act WIOA Title I Programs, and Vocational Rehabilitation Adult Education. The NPRM provided an opportunity for the public to send comments on the two information collections directly to the Departments; commenters also were advised that comments under the PRA could be submitted directly to OMB. OMB issued a notice of action for each request asking the Departments to resubmit the ICRs, after considering public comments, at the final

rule stage. Given that information collection instruments were not ready at the time the NPRM published, the Departments provided additional opportunities for the public to comment on the information collections through notices in the *Federal Register* that provided additional comment periods on the associated forms and instructions. These comment periods provided at least 60 days for comments to be submitted to the agencies. Each of these ICRs was then submitted for OMB approval and additional notices were published in the *Federal Register* that invited comments to be sent to OMB for a period lasting at least 30 days. The Departments also submitted each ICR for further approval to incorporate the provisions of this Joint WIOA Final Rule; these final rule ICRs were not subject to further public comment. The Departments provide a status of each ICR in the final rule. Where a review remained pending, the ETA or ED will publish an additional notice to announce OMB's final action on the ICR. The Departments also discuss the public comments received related to the ICRs. The ICRs have been submitted under a procedure that allows a collection to be sponsored by one agency and later subscribed to by other agencies. Such ICRs are classified as common forms. In making the initial request, the host agency submits the request and claims its portion of the burden; ultimately, the full burden is accounted for as other agencies subscribe and claim their share of the burden. For purposes of this Joint WIOA Final Rule, only the ETA share of the burden is discussed. The full burden is addressed in the supporting statement used to justify the request. The Departments state that the ICR review status only relates to requests related directly to the final rule. Certain ICR packages that were previously approved are being updated to change references to those in the Joint WIOA Final Rule. The Departments state that as has been the practice throughout WIOA implementation, the Departments will continue to update stakeholders on the status of the joint ICRs related to state planning and performance accountability through other means.

The Required Elements for the Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act Information Collection, OMB 1205-0522, substantive requirements were approved via a notice of action dated February 19, 2016. According to the Departments, the information collection is being updated to reflect references in the Joint WIOA Final Rule. Also, the Workforce Innovation and Opportunity Act Common Performance Reporting ICR review remains pending. The substantive requirements will be approved through a notice of action by OMB and will take effect as of that date. The Departments state that they will announce this approval.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 102, 103, 107, 116, 121, 134, 189, and 503 of the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014), and 29 U.S.C. §§ 102 and 103.

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

The Departments state that the final rule is a significant regulatory action under the Order. The economic effects of the costs that will result from the changes in this final rule are economically significant.

Executive Order No. 13,132 (Federalism)

The Departments concluded that the rulemaking has no federalism implications. The Joint WIOA Final Rule has no substantial direct effects on states, on the relationships between the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Departments have concluded that the final rule does not have a sufficient federalism implication to warrant the preparation of a summary impact statement.