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November 16, 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 Education: Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education 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 (Education) entitled "Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program" (RIN: 1840-AD19). We received the rule on November 2, 2016. It was published in the *Federal Register* as final regulations on November 1, 2016. 81 Fed. Reg. 75,926.

The final rule establishes a new federal standard and a process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of a school under the William D. Ford Federal Direct Loan (Direct Loan) Program. The rule also prohibits participating schools from using certain contractual provisions regarding dispute resolution processes, such as pre-dispute arbitration agreements or class action waivers, and requires certain notifications and disclosures by schools regarding their use of arbitration. The rule codifies Education's current policy regarding the impact that discharges have on the 150 percent Direct Subsidized Loan Limit. The rule amends the Student Assistance General Provisions regulations to revise the financial responsibility standards and add disclosure requirements for schools. Finally, the rule amends the discharge provisions in the Federal Perkins Loan (Perkins Loan), Direct Loan, Federal Family Education Loan (FFEL), and Teacher Education Assistance for College and Higher Education (TEACH) Grant programs. Education expects these changes will provide transparency, clarity, and ease of administration to current and new regulations and protect students, the federal government, and taxpayers against potential school liabilities resulting from borrower defenses.

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. The final rule did not discuss the Unfunded Mandates Act but in its submission to us, Education indicated that the Act was not applicable.

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
Assistant General Counsel
Division of 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
“STUDENT ASSISTANCE GENERAL PROVISIONS,
FEDERAL PERKINS LOAN PROGRAM,
FEDERAL FAMILY EDUCATION LOAN PROGRAM,
WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM, AND
TEACHER EDUCATION ASSISTANCE FOR COLLEGE
AND HIGHER EDUCATION GRANT PROGRAM”
(RIN: 1840-AD19)

(i) Cost-benefit analysis

The Department of Education (Education) discussed the costs, benefits, and transfers in this final rule. According to Education, the primary potential benefits of these regulations are:

- (1) an updated and clarified process and a federal standard to improve the borrower defense process and usage of the borrower defense process to increase protections for students;
- (2) increased financial protections for taxpayers and the federal government;
- (3) additional information to help students, prospective students, and their families make educated decisions based on information about an institution's financial soundness and its borrowers' loan repayment outcomes;
- (4) improved conduct of schools by holding individual institutions accountable and thereby deterring misconduct by other schools;
- (5) improved awareness and usage, where appropriate, of closed school and false certification discharges; and
- (6) technical changes to improve the administration of programs under title IV of the Higher Education Act of 1965, as amended.

Education also stated that costs associated with the regulations will fall on a number of affected entities including institutions, guaranty agencies, the federal government, and taxpayers. These costs include changes to business practices, review of marketing materials, additional employee training, and unreimbursed claims covered by taxpayers. The largest quantified impact of the regulations is the transfer of funds from the federal government to borrowers who succeed in a borrower defense claim, a significant share of which will be offset by the recovery of funds from institutions whose conduct gave rise to the claims.

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

Education prepared a final regulatory flexibility analysis to present an estimate of the effect of this final rule on small entities. The analysis included a succinct statement of the objectives of, and legal basis for, the final rule; a description of and, where feasible, an estimate of the number of small entities to which the regulations will apply; a description of the projected reporting, recordkeeping, and other compliance requirements of the regulations, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; an identification, to the

extent practicable, of all relevant federal regulations that may duplicate, overlap, or conflict with the regulation, and alternatives considered.

(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 did not discuss the Act. In its submission to us, Education indicated that 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 June 16, 2016, Education published a proposed rule. 81 Fed. Reg. 39,329. Education received comments from more than 50,000 parties on the proposed rule, which are 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 five Office of Management and Budget (OMB) control numbers for which the associated burden estimate was altered by this final rule. These numbers are 1845-0004, 1845-0020, 1845-0022, 1845-0142, and 1845-0143. Education estimates that this final rule increased the total burden for these requirements by 258,920 hours.

Statutory authorization for the rule

Education promulgated this final rule under the authority of sections 1001 to 1003, 1070g, 1071 to 1087-4, 1085, 1087aa to 1087hh, 1088, 1091, 1092, 1094, 1099c, 1099c-1, 1221-3, 1221e-3(a)(1), 1226a-1, and 1231a of title 20; section 2401 of title 28; and sections 3702, 3711(e), 3716(b), and 3720A of title 31, United States Code and section 4 of Public Law 95-452, 92 Stat. 1101-1109.

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

Education determined that this final rule will have an annual effect on the economy of more than \$100 million, and therefore the rule is economically significant under the Order.