



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

B-328794

February 9, 2017

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

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Education: Open Licensing Requirement for Competitive Grant Programs*

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 “Open Licensing Requirement for Competitive Grant Programs” (RIN: 1894-AA07). We received the rule on January 25, 2017. It was published in the *Federal Register* as final regulations on January 19, 2017, with an effective date of March 20, 2017. 82 Fed. Reg. 7376.

The final regulations amend the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in order to require, subject to certain categorical exceptions and case-by-case exceptions, that Education grantees awarded competitive grant funds openly license to the public copyrightable grant deliverables created with Education grant funds.

The Congressional Review Act (CRA) 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). This final rule was published in the *Federal Register* on January 19, 2017. 82 Fed. Reg. 7376. It was received on January 25, 2017, and has an effective date of March 20, 2017. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of Education’s compliance with the procedural steps, other than the 60-day delay in effective date, required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. With regard to the Regulatory Flexibility Act, Education indicated that it had certified that these final regulations would not have a significant economic impact on a substantial number of small entities in its submission to us but did not otherwise explicitly state this certification or discuss the Regulatory Flexibility Act in the final regulations themselves.

Additionally, Education did not address the Unfunded Mandates Act in these final regulations. With regard to the other procedural steps, our review 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
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
“OPEN LICENSING REQUIREMENT FOR
COMPETITIVE GRANT PROGRAMS”
(RIN: 1894-AA07)

(i) Cost-benefit analysis

The Department of Education (Education) determined that these final regulations will not impose significant costs on entities that receive assistance through the Department’s competitive grant programs. Education noted that the annual variation in the total volume of new and continuing discretionary grant awards, as well as in the purposes and priorities associated with such grants, limits the precision of its estimates, but Education estimates that the upper bound total cost of these regulations, over 10 years, will be approximately \$22.6 million in labor fees, at an annualized rate of \$3.2 million per year, with no additional costs to support technology infrastructure. This estimate assumes a discount rate of 3 to 7 percent. Education identified the benefit of these final regulations to be of broader and more effective dissemination of Education grant-funded works to the public.

(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 these final regulations would not have a significant economic impact on a substantial number of small entities. Education included an Initial Regulatory Flexibility Analysis in the proposed rule in which Education certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities. 80 Fed. Reg. 67,672, 67,676 (Nov. 3, 2015).

(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 these final regulations. In its submission to us, Education indicated that it had not prepared a written statement under section 202 of the Act. A written statement is required for rules which include any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year. These regulations did not state, for purposes of the Act, whether they include any mandate larger than this statutory threshold, although Education’s estimated costs, as discussed above, are below the threshold.

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

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

On November 3, 2015, Education published a proposed rule. 80 Fed. Reg. 67,672. In response, 146 parties submitted comments. Education responded to the comments in the final regulations.

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

Education determined that these final regulations contain an information collection requirement under the Order. Education submitted a copy of this section as part of a change request to the Office of Management and Budget (OMB) for its review under OMB Control Numbers 1894-0006 and 1894-0009 to reflect this new requirement. Education determined that there will be no increase or decrease in burden. This change request has been approved by OMB.

Statutory authorization for the rule

Education promulgated these final regulations under the authority of sections 1221e-3 and 3474 of title 20, United States Code.

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

Education found these final regulations to be economically significant under the Order and therefore subject to review by OMB.