



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

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October 8, 2019

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

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan 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 (the Department) entitled “Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program” (RIN: 1840-AD26). We received the rule on September 11, 2019. It was published in the *Federal Register* as a final rule on September 23, 2019. 84 Fed. Reg. 49788. The effective date of the rule is July 1, 2020.

The final rule establishes new Institutional Accountability regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to revise a federal standard and a process for adjudicating borrower defenses to repayment claims for federal student loans disbursed after July 1, 2020, and provides for actions the Secretary of Education may take to collect from schools the amount of financial loss due to successful borrower defenses to repayment loan discharges. The Department also amends regulations regarding pre-dispute arbitration agreements or class action waivers as a condition of enrollment, and requires institutions to include information regarding the school’s internal dispute resolution and arbitration processes as part of the borrower’s entrance counseling.

Also, according to the Department, the final rule amends the Student Assistance General Provisions regulations (1) to establish the conditions or events that have or may have an adverse, material effect on an institution’s financial condition and which warrant financial protection for the Department; (2) to update the definitions of terms used to calculate an institution’s composite score to conform with changes in certain accounting standards; and (3) to account for leases and long-term debt. Finally, the final rule amends the loan discharge provisions in the Direct Loan Program.

The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of the publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Here, the rule has a stated effective date of July 1, 2020. However, the Department states in the rule that the Secretary of Education is exercising her authority under section 482(c) of the Higher Education Act of 1965, as amended, to designate certain parts of this rule as ones that an entity subject to the rule may choose to implement earlier with conditions for early implementation. 20 U.S.C. § 1089(c). These parts are (1) the regulatory changes to section 668.172(d), (2) appendix A to subpart L of part 668, and (3) appendix B to subpart L of part 668, at title 34 of the Code of Federal Regulations. The Secretary designated these parts of the rule for early implementation beginning September 23, 2019, at the discretion of each institution, as appropriate. The rule did not address the impact of a designation of early implementation under section 482(c) on the 60-day delay requirement of the Congressional Review Act.

Enclosed is our assessment of the Department's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Amanda Amann
Deputy Assistant General Counsel for the
Division of Regulatory Services
Department of Education

ENCLOSURE

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 FAMILY EDUCATION LOAN PROGRAM, AND
WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM"
(RIN: 1840-AD26)

(i) Cost-benefit analysis

The Department of Education (the Department) assessed the potential benefits and costs of this final rule. According to the Department, benefits of the rule include (1) disclosure to borrowers about use of mandatory pre-dispute arbitration clauses and potential increase in settlements between borrowers and institutions and (2) reduced administrative burden related to processing defense to repayment applications. The Department did not quantify these benefits. Benefits also included cost reductions associated with paperwork compliance requirements, which were estimated to be \$6.01 million (at a 7 percent discount rate) and \$6.02 million (at a 3 percent discount rate).

According to the Department, the costs include changes in the Department's systems to collect relevant information and calculate revised composite scores, which the Department did not quantify. The Department also determined that this rule will result in changes in transfers, which include (1) an estimated reduction in defense to repayment discharges from the federal government to affected borrowers (partially borne by affected institutions, via reimbursements) of \$512.5 million (at a 7 percent discount rate) or \$498 million (at a 3 percent discount rate); (2) an estimated reduction in reimbursements of borrower defense claims from affected institutions to affected student borrowers, via the federal government of \$153.4 million (at a 7 percent discount rate) and \$149 million (at a 3 percent discount rate); and (3) an estimated reduction in closed school discharges from the federal government to affected borrowers of \$37.2 million (at a 7 percent discount rate) and \$40.6 million (at a 3 percent discount rate).

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

The Secretary of the Department certified that this final rule will not have a significant economic impact on a substantial number of 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 Department did not address the Act in the final rule. In its submission to us, the Department indicated that it did not prepare a written statement under section 202 of the Act.

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

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

On July 31, 2018, the Department published a proposed rule. 83 Fed. Reg. 37242. The Department received over 30,000 comments in response to the proposed rule. The final rule contains an analysis of the comments received and any changes in the regulation, since publication of the 2018 proposed rule.

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

The Department determined that this final rule contains information collection requirements under the Act. The Department states that it has or will at the required time submit a copy of the relevant sections and an Information Collections Request to the Office of Management and Budget (OMB) for its review. The Department determined the total burden hours and total change in burden hours associated with the OMB Control Numbers (1845-0004; 1845-0020; 1845-0021; 1845-0022; 1845-0143) were 11,298,671 hours and -145,669 hours, respectively.

Statutory authorization for the rule

The Department promulgated this final rule under the authority of sections 1001 to 1003, 1070g, 1082, 1085, 1088, 1091, 1092, 1094, 1099c, 1099a-2, 1099c, 1099c-1, 1141, 1221-3, and 1231a of title 20, United States Code. The rule was also promulgated under the authority of section 4 of Pub. L. No. 95-452, 92 Stat. 1101-1109 (1976), as amended.

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

The Department determined that this final rule is economically significant under the Order and stated that the rule is subject to review by OMB.

Executive Order No. 13,132 (Federalism)

The Department determined that this final rule does not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.