



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

B-331652

December 11, 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: Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act*

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 (Department) entitled “Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act” (RIN: 1840-AD48). We received the rule on December 2, 2019. It was published in the *Federal Register* as interim final regulations on November 26, 2019. 84 Fed. Reg. 65000. The effective date of the rule is July 1, 2020.

According to the Department, the interim final rule amends and updates the regulations for total and permanent disability student loan discharge for veterans by removing administrative burdens that may have prevented at least 20,000 totally and permanently disabled veterans from obtaining discharge of their student loans. Under this rule, the Department will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is “totally and permanently disabled” to be eligible for discharge and will not require additional documentation to discharge the borrower’s loans.

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 these regulatory changes for early implementation effectively immediately. 20 U.S.C. § 1089(c).

Furthermore, the 60-day delay in effective date can be waived if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued. 5 U.S.C. § 808(2). The Department states that the rule removes administrative burdens that have created significant and unnecessary hardship for veterans and that removing these barriers is a matter of pressing national concern. Although the Department construes its interim final rulemaking power narrowly, the Department further states that under these circumstances it finds good cause to implement the rule immediately.

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  
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  
“TOTAL AND PERMANENT DISABILITY DISCHARGE OF  
LOANS UNDER TITLE IV OF THE HIGHER EDUCATION ACT”  
(RIN: 1840-AD48)

(i) Cost-benefit analysis

The Department of Education (Department) estimated that the interim final rule would have an annualized benefit in reduced paperwork burden on veterans who qualify for a total and permanent disability discharge of \$141,000 (at both a 7 percent and 3 percent discount rate), and would have an annualized transfer from the federal government to veterans in increased loan discharges for veterans with a qualifying total and permanent disability status of \$138.7 million (at 7 percent) and \$130.2 million (at 3 percent). The rule also has the benefit of an increased share of qualifying veterans receiving a total and permanent disability discharge, which the Department did not quantify.

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

The Secretary of Education certified that this interim 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 interim 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 (APA), 5 U.S.C. §§ 551 *et seq.*

The Department waived the notice-and-comment process under 5 U.S.C. § 553(b)(3)(B), and explained its rationale in a section entitled “Waiver of Notice and Comment Rulemaking, Negotiated Rulemaking, and Delayed Effective Date under the Administrative Procedure Act.” The Department determined that, given the uniquely specific facts of this case, the critical public need for the federal government to support disabled veterans, and the nature of this deregulatory action, there is good cause for interim final rule making and that such action is in the public interest. The Department stated that there would be a comment period ending on January 27, 2020.

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

The Department determined that this interim final rule contains information collection requirements under the Act. The Department states that it has submitted a copy of the relevant

sections of the rule and an Information Collections Request to the Office of Management and Budget (OMB) for its review. The Department determined that the rule does not impose any new information collection burden and states that OMB previously approved the information collection requirement under OMB control number 1845-0065. The Department also estimates that the rule will result in a one-time reduction in the burden on veterans of 5,000 hours.

#### Statutory authorization for the rule

The Department promulgated this interim final rule under the authority of sections 1070g, 1071 through 1087-4, 1087a through 1087j, and 1087aa through 1087hh of title 20, United States Code and Public Law No. 111-256, 124 Stat. 2643 (Oct. 5, 2010).

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

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