



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

B-334697

October 17, 2022

The Honorable Patty Murray
Chairwoman
The Honorable Richard Burr
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: Final Priorities, Requirements, and Definitions—
School-Based Mental Health Services 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 (ED) entitled “Final Priorities, Requirements, and Definitions—School-Based Mental Health Services Grant Program” (ED-2021-OESE-0122). We received the rule on October 13, 2022. It was published in the *Federal Register* as final priorities, requirements, and definitions on October 4, 2022. 87 Fed. Reg. 60092. The effective date is November 3, 2022.

According to ED, the rule announces final priorities, requirements, and definitions under the School-Based Mental Health Services Grant Program, Assistance Listing Number 84.184H. ED stated the agency may use one or more of these priorities, requirements, and definitions for competitions in fiscal year 2022 and later years. ED stated these final priorities, requirements, and definitions are designed to direct funds to increase the number of credentialed school-based mental health services providers in local educational agencies with demonstrated need, in order to meet student mental health needs.

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). The final rule was published in the *Federal Register* on October 4, 2022. 87 Fed. Reg. 60092. The *Congressional Record* does not indicate when either the Senate or the House of Representatives received the rule. The final rule has a stated effective date of November 3, 2022. Therefore the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of ED’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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Lynn Mahaffie
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
“FINAL PRIORITIES, REQUIREMENTS, AND DEFINITIONS—
SCHOOL-BASED MENTAL HEALTH SERVICES GRANT PROGRAM”
(ED-2021-OESE-0122)

(i) Cost-benefit analysis

The Department of Education (ED) estimated the final rule would result in transfers from the federal government to local educational agencies and state educational agencies in the amount of \$108,600,000 at the three and seven percent discount rates.

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

ED certified the final rule would 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

In its submission to us, ED indicated that it did not prepare an analysis of the final rule under the Act.

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

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

On August 2, 2022, ED published a proposed rule. 87 Fed. Reg. 47152. ED received comments and addressed them in the final rule.

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

ED determined the final rule contains information collection requirements (ICRs) already approved by the Office of Management and Budget (OMB). ED estimated that the aggregate time for parties to complete the ICRs is 12,000 hours.

Statutory authorization for the rule

ED promulgated the final rule pursuant to section 7281 of title 20, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

ED determined the final rule is economically significant and subject to OMB review.

Executive Order No. 13132 (Federalism)

In its submission to us, ED indicated that it did not prepare an analysis of the final rule under the Order. ED did, however, determine the final rule does not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.