



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

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October 27, 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—
Mental Health Service Professional Demonstration 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 (Department) titled “Final Priorities, Requirements, and Definitions—Mental Health Service Professional Demonstration Grant Program” (ED-2022-OESE-0094). 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. 60083. The effective date is November 3, 2022.

According to the Department, it is announcing final priorities, requirements, and definitions under the Mental Health Service Professional Demonstration Grant Program, Assistance Listing Number 84.184X. The Department stated that it may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2022 and later years. The Department also stated that these final priorities, requirements, and definitions are designed to allow the Department to provide competitive grants to support and demonstrate innovative partnerships between one or more high-need local educational agencies (LEAs) (as defined in this rule) or a state educational agency on behalf of one or more high-need LEA, and an eligible Institution of Higher Education (as defined in this rule) to train school-based mental health services providers for employment in schools and LEAs. The Department stated further that the goal of the program is to increase the number and diversity of high quality, trained providers available to address the shortages of mental health services professionals in schools served by high-need LEAs.

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). Here, the *Congressional Record* does not yet

reflect the date of receipt by either Chamber of Congress; however, the Department provided proof of delivery showing the House received the rule on October 17, 2022, and the Senate received the rule on October 14, 2022. Email from Program Specialist, Division of Regulatory Services, Department of Education, to Senior Staff Attorney, GAO, *RE: NPR Mental Health Services Prof. Dem. Grants Program* (Oct. 18, 2022). This rule was published in the *Federal Register* on October 4, 2022. The 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 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 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, flowing style.

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
TITLED
“FINAL PRIORITIES, REQUIREMENTS, AND DEFINITIONS—
MENTAL HEALTH SERVICE PROFESSIONAL DEMONSTRATION GRANT PROGRAM”
(ED-2022-OESE-0094)

(i) Cost-benefit analysis

The Department of Education (Department) prepared an accounting statement for this final regulatory action. The Department stated that the accounting statement provides its best estimate of the changes in annual monetized transfers as a result of this final rule. The Department estimates the annualized monetized transfers from the federal government to local educational agencies (LEAs) and Institutions of Higher Education (IHEs) to be \$108.6 million at both a 3 and 7 percent discount rate.

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

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

In its submission to us, the Department indicated that it did not prepare the analysis provided for under the Act.

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

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

The Department published a notice of proposed priorities, requirements, and definitions in the *Federal Register* on August 2, 2022. 87 Fed. Reg. 47159. The Department stated that it received 12 comments. The Department also stated that it addressed all comments except those that were out of scope, general comments not directly related to this final rule, or comments that addressed minor and technical issues.

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

The Department stated that this final rule contains information collection requirements that were already approved by the Office of Management and Budget. The Department also stated that the final rule does not affect the currently approved data collection because it simply requires applicants to complete and submit an application for federal assistance using the Department's standard application forms. The Department estimates the total burden hours to be 20,000 hours.

Statutory authorization for the rule

The Department promulgated this final rule pursuant to section 7281 of title 20, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Department determined that this final rule will have an annual effect on the economy of more than \$100 million because approximately \$143 million is available under this program from fiscal year (FY) 2022 appropriations actions, and \$100 million is available each year from FY 2023 to FY 2026. Therefore, according to the Department, this final action is economically significant under the Order.

Executive Order No. 13132 (Federalism)

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