



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

B-334755

November 16, 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: Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; 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 (ED) entitled “Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program” (RINs: 1840-AD53, 1840-AD59, 1840-AD70, 1840-AD71). We received the rule on November 1, 2022. It was published in the *Federal Register* as final regulations on November 1, 2022. 87 Fed. Reg. 65094. The effective date is July 1, 2023.

According to ED, this final rule establishes new regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to establish a new federal standard and a process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of their school. ED stated that the rule amends the Direct Loan Program regulations to prohibit participating schools from using certain contractual provisions regarding dispute resolution processes and to require certain notifications and disclosures by institutions or schools regarding their use of mandatory arbitration. Additionally, ED indicated that the rule amends the Direct Loan regulations to eliminate interest capitalization in instances where it is not required by statute. ED expressed that the rule also amends the regulations governing closed school discharges and total and permanent disability discharges in the Federal Perkins Loan, Direct Loan, and Federal Family Education Loan (FFEL) programs. ED stated that the rule amends the regulations governing false certification discharges in the Direct Loan and FFEL programs. Finally, as reported by ED, the rule amends the regulations governing Public Service Loan Forgiveness in the Direct Loan program to improve the application process, and to clarify and expand definitions for full-time employment, qualifying employers, and qualifying

monthly payments. ED declared that the changes from the rule would bring greater transparency and clarity and improve the administration of federal student financial aid programs to assist and protect students, participating institutions, and taxpayers.

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, prominent initial 'S'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Lynn Mahaffie  
Assistant General Counsel  
Division of 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  
“INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965,  
AS AMENDED; STUDENT ASSISTANCE GENERAL PROVISIONS;  
FEDERAL PERKINS LOAN PROGRAM; FEDERAL FAMILY EDUCATION LOAN PROGRAM;  
AND WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM”  
(RINS: 1840-AD53, 1840-AD59, 1840-AD70, 1840-AD71)

(i) Cost-benefit analysis

The Department of Education (ED) conducted an economic analysis of this final rule. In regard to the costs of the rule, ED estimated the quantified annualized economic and net budget impacts of the rule to be \$71.8 billion in increased transfers among borrowers, institutions, and the federal government, including annualized transfers of \$7.4 billion at 3 percent discounting and \$7.8 billion at 7 percent discounting, and annual quantified costs of \$6.3 million related to paperwork burden. According to ED, the costs of the rule to taxpayers in the form of transfers include borrower defenses to repayment (BD) claims that are not reimbursed by institutions; additional relief through closed school, Public Service Loan Forgiveness (PSLF), total and permanent disability (TPD) discharges, and false certification discharges to borrowers through programs to which they are legally entitled under the Higher Education Act of 1965; and the foregone interest where capitalizing interest is not required.

In regard to the benefits of the rule, ED reported that the rule’s benefits include: (1) a clarified process for BD discharge applications assisted by the creation of a primary federal standard to streamline ED’s consideration of applications, while affording institutions an opportunity to respond to allegations contained in BD claims; (2) increased opportunities for borrowers to seek relief from institutional misconduct by prohibiting the use of mandatory pre-dispute arbitration and class action waivers; (3) improved school conduct and offsetting some of the costs of discharges to the federal government and taxpayers as a result of holding individual institutions financially accountable for BD discharges and deterring misconduct; (4) increased automated discharges for borrowers, with the option to opt out; and (5) improved access to and expanded eligibility for, where appropriate, PSLF, closed school, TPD, and false certification discharges.

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

ED 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, ED indicated that the requirement to prepare a written statement under the Act was not applicable to this final rule.

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

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

On July 13, 2022, ED published a proposed rule. 87 Fed. Reg. 41878. According to ED, the agency received comments about the proposed rule from 4,094 parties. ED responded to comments in this final rule. The agency stated that it did not address comments about minor, non-substantive changes, comments that recommended changes that were outside the authority of the Secretary of Education, comments pertaining to operational processes, and comments about issues that are outside the scope of the proposed rule.

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

ED determined that this final rule contains information collection requirements under the Act. ED stated that it had submitted, and at the required time will submit, an Information Collections Request (ICR) to the Office of Management and Budget (OMB) for its review. ED discussed the following ICRs in the rule: Student Assistance General Provisions—Student Right to Know (OMB Control Number 1845-0004); Student Assistance General Provisions (OMB Control Number 1845-0022); Federal Family Education Loan Program Regulations (OMB Control Number 1845-0020); and William D. Ford Federal Direct Loan Program Regulations (OMB Control Number 1845-0021). ED estimated that the sum of the total burden hours associated with each OMB Control Number affected by the rule is 11,428,395.

Statutory authorization for the rule

ED stated that this final rule was promulgated pursuant to various sections of title 20, United States Code, as well as Public Law 94-452, 92 Stat. 1101–09.<sup>1</sup>

Executive Order No. 12866 (Regulatory Planning and Review)

According to ED, OMB determined that this final rule is economically significant under the Order and subject to OMB review.

Executive Order No. 13132 (Federalism)

ED determined that this final rule does not have federalism implications.

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<sup>1</sup> Though the final rule referenced Public Law 94-452, 92 Stat. 1101–09, we believe this to be a typographic error and that the correct reference should be Public Law 95-452, 92 Stat. 1101–09.