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United States Government Accountability Office  
Washington, DC 20548

B-319306

February 16, 2010

The Honorable Tom Harkin  
Chairman  
The Honorable Michael B. Enzi  
Ranking Minority Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable George Miller  
Chairman  
The Honorable John Kline  
Ranking Minority Member  
Committee on Education and Labor  
House of Representatives

Subject: *Department of Education: Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent 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 entitled “Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program” (RIN: 1840-AC96).<sup>1</sup> We received the rule on January 29, 2010. It was published in the *Federal Register* on November 23, 2009. 74 Fed. Reg. 61,240.

The final rule adopts regulations for the Academic Competitiveness and National Science and Mathematics to Retain Talent Grant programs; Student Assistance General Provisions; Federal Pell Grant Program; and Teacher Education Assistance

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<sup>1</sup> Also pursuant to section 801(a)(2)(A) of title 5, United States Code, GAO reported on the interim final rule made final by this action. B-318225 (June 4, 2009).

for College and Higher Education Grant Program. This rule implements provisions of the Higher Education Act of 1965, as amended by the Ensuring Continued Access to Student Loans Act of 2008 and the Higher Education Opportunity Act of 2008.<sup>2</sup>

The final rule has a stated effective date of January 22, 2010. The Congressional Review Act 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 rule was published in the *Federal Register* on November 23, 2009, but was received by Congress on December 8, 2009. 74 Fed. Reg. 61,240; 156 Cong. Rec. H31–H32 (Jan. 12, 2010) (Executive Communications, etc.). Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of Education’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that, with the exception of the effective date, Education complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Elizabeth A.M. McFadden  
Assistant General Counsel  
Division of Regulatory Services  
Department of Education

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<sup>2</sup> Pub. L. No. 110-227 (May 7, 2008); Pub. L. No. 110-315 (Aug. 14, 2008).

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; TEACHER EDUCATION  
ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH)  
GRANT PROGRAM; FEDERAL PELL GRANT PROGRAM; ACADEMIC  
COMPETITIVENESS GRANT PROGRAM AND NATIONAL SCIENCE AND  
MATHEMATICS ACCESS TO RETAIN TALENT GRANT PROGRAM"  
(RIN: 0790-AI58)

(i) Cost-benefit analysis

The Department of Education (Education) estimates that this final rule will result in 538,000 additional awards totaling \$448 million over award years 2009–2010 and 2010–2011. These changes will increase federal costs by the same amount.

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

Education determined 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

Education did not prepare a written statement under section 202 of the Act with respect to this final rule. In our report on the interim final rule pursuant to the Congressional Review Act, we noted that because Education did not issue a notice of proposed rulemaking in conjunction with this interim final rule, Education was not required to prepare an Unfunded Mandates Reform analysis for the interim final rule.

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

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

Education published an interim rule with request for comments on May 1, 2009, with an effective date of July 1, 2009. 74 Fed. Reg. 20,210. Education received two comments to which it responded in the final rule. 74 Fed. Reg. 61,241–243.

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

Education determined that this final rule contains information collection requirements under the Act and has submitted those requirements to the Office of Management and Budget (OMB) for review. Education estimates that the final regulations will increase the burden for institutions of higher learning by 12,412 hours under OMB Control Number 1845-0039 and for states, private high schools, home schools, and individuals by 18,280 under OMB Control Number 1845-0092.

Statutory authorization for the rule

Education promulgated this final rule under the authority of sections 1070a and 1070a-1 of title 20, United States Code.

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

Education determined that this final rule is economically significant under the Order because it will have an annual effect on the economy of more than \$100 million. This final rule was reviewed by OMB under the Order.

Executive Order No. 12,372 (Intergovernmental Review)

Education stated that this final rule provides early notification of its specific plans and actions for the relevant programs.