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United States Government Accountability Office  
Washington, DC 20548

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B-322107

June 27, 2011

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

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

Subject: *Department of Education: Program Integrity: Gainful Employment--Debt Measures*

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 (Education), entitled "Program Integrity: Gainful Employment--Debt Measures" (RIN: 1840-AD06). We received the rule on June 2, 2011. It was published in the *Federal Register* as a final rule on June 13, 2011, with an effective date of July 1, 2012. 76 Fed. Reg. 34,386.

The final rule amends the Student Assistance General Provisions regulations to improve disclosure of relevant information and to establish minimal measures for determining whether certain postsecondary educational programs lead to gainful employment in recognized occupations, and the conditions under which these educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

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 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: Shannan Higgins  
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  
"PROGRAM INTEGRITY: GAINFUL EMPLOYMENT--DEBT MEASURES"  
(RIN: 1840-AD06)

(i) Cost-benefit analysis

The Department of Education has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and believes that the benefits justify the costs. Education states that in some cases, these costs and benefits are difficult to quantify. According to Education, the benefits of the final regulations for students that are discussed in this section include: improved market information and development of measures linking programs to labor market outcomes; improved retention, graduation and default rates; and better return on money spent on education. Education believes the overall costs of the rule fall into three categories: an increase in educational expenses when students transfer from failing programs to succeeding programs, paperwork costs associated with complying with the regulations, and other compliance costs that may be incurred by institutions as they attempt to improve their programs to avoid losing their eligibility for Title IV Higher Education Act funds. Overall, however, Education estimates that the final regulations will save the federal government between \$23 million and \$51 million on an annualized basis.

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

Education states that the *Final Regulatory Flexibility Analysis* considers issues relevant to small businesses and nonprofit institutions.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. § 1221e-4, and based on Education's own review, Education determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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

Education published two notices of proposed rulemaking (NPRMs) in 2010. On June 18, 2010, the Secretary published the first NPRM in the *Federal Register* (75 Fed. Reg. 34,806) (June 18, 2010, NPRM) proposing to strengthen and improve the administration of programs authorized under title IV of the HEA. Education explains that with regard to gainful employment, the June 18, 2010, NPRM included proposals covering several technical, reporting, and disclosure issues. The June 18, 2010, NPRM reserved for a second NPRM the remaining gainful employment issues, which addressed the extent to which certain educational programs lead to gainful employment and the conditions under which those programs remain eligible for Title IV, HEA program funds. On July 26, 2010, Education published a second NPRM for gainful employment issues in the *Federal Register* (75 Fed. Reg. 43,616) (July 26, 2010, NPRM).

The Department reviewed the comments from both the June 18, 2010, NPRM and the July 26, 2010, NPRM and divided the final regulations into three separate documents. These final regulations, Gainful Employment—Debt Measures, comprise the third set of regulations and reflect a number of significant changes from the proposed regulations in response to public comments. Education received over 90,000 comments in response to the July 26, 2010, NPRM, including tens of thousands of comments in support and opposition of Education’s proposals. Subsequent to Education’s issuance of the Gainful Employment/New Programs final regulations, it also met with more than 100 individuals and organizations to permit these individuals and entities to clarify their comments in person. Education extended its work on the regulations by 6 additional months to consider fully these comments.

In sum, Education revised these regulations to promote disclosure, to encourage institutions to improve their occupational programs, and to provide more time for this improvement before revoking eligibility. Education believes that institutions will strengthen their educational programs to meet these higher standards and relatively few programs will fail.

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

Education states that section 668.7 contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)), Education has submitted a copy of this section to the Office of Management and Budget (OMB) for review. In general, throughout the preamble, Education discusses debt-to-earnings ratios, repayment rates, draft rates and required disclosures of the final repayment rate and the debt-to-earnings ratios in the context of being calculated in or beginning in fiscal year (FY) 2012. Education has chosen in this section to reference FY 2013 so that its analysis can include critical data tied to second year failure of a debt measure and the level of debt warning notice required after a second year failure.

Education believes that only by including this data in its analysis can it provide complete and accurate information regarding burden under these final regulations. Additionally, Education states that section 668.7(g)(6)(i) also contains information collection requirements; however, that burden is already reflected under OMB Control Number 1845–0107.

#### Statutory authorization for the rule

Education states the authority for the final rule as 20 U.S.C. §§ 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless noted otherwise. Education also states that the final rule is authorized by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508) and the Secretary’s general authority to regulate under section 414 of the Department of Education Organization Act.

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

Education has determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is “economically significant” and subject to OMB review under section 3(f)(1) of Executive Order 12,866.