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July 26, 2019

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Robert C. "Bobby" Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: Program Integrity: Gainful Employment*

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) entitled "Program Integrity: Gainful Employment" (RIN: 1840-AD31). We received the rule on July 12, 2019. It was published in the *Federal Register* as final regulations on July 1, 2019. 84 Fed. Reg. 31392. The effective date stated in the rule is July 1, 2020.

According to the Department, the Secretary of the Department is amending the regulations on institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance Central Provisions to rescind the Department's gainful employment (GE) regulations. This rule rescinds the GE regulations and removes and reserves subpart Q of the Student Assistance General Provisions in title 34 of the Code of Federal Regulations (CFR), part 668, and also rescinds subpart R of the Student Assistance and General Provisions in title 34, CFR, part 668.

The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of the 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 rule has a stated effective date of July 1, 2020. However, the Secretary of the Department states in the rule that she is exercising her authority under section 482(c) of HEA to designate the regulatory changes to subpart Q and subpart R of the Student Assistance General Provisions at title 34, part 668, of the CFR, included in the rule, for early implementation beginning July 1, 2019, at the discretion of each institution.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Amanda Amann
Deputy 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”
(RIN: 1840-AD31)

(i) Cost-benefit analysis

The Department of Education (Department) assessed the potential costs and benefits of this final rule, and the Department believes that the benefits outweigh the costs. According to the Department, there will be one primary cost and several outweighing benefits associated with rescinding the GE regulations. The primary cost is that some programs that may have failed the debt-to-earnings (D/E) rates measure, and as a result lose title IV eligibility, will continue to participate in title IV, Higher Education Act (HEA) programs. According to the Department, in instances in which the program failed because it was a low-quality program, there is a cost associated with continuing to provide title IV support to such a program, especially if doing so burdens students with debt they cannot repay or an educational credential that does not improve their employability.

However, according to the Department, there are numerous benefits associated with eliminating the gainful employment (GE) regulations, including: (1) programs producing poor earnings outcomes will not escape notice simply because taxpayer subsidies make the program less costly to students; (2) programs that prepare students for high-demand careers will be less likely to lose title IV eligibility just because those high-demand careers do not pay high wages; (3) students will not inadvertently select a non-GE program with less favorable student outcomes than a comparable GE program simply because non-GE programs are not subject to the GE regulations; (4) institutions will save considerable time and money by eliminating burdensome reporting and disclosure requirements; (5) all students will retain the right to enroll in the program of their choice, rather than allowing government to decide which programs are worth of a student's time and financial investment; and (6) by providing debt and earnings data for all title IV programs through the College Scorecard, all students will be able to identify programs with better outcomes or limit borrowing based on what they are likely to be able to repay. The Department believes that the benefits outweigh the costs since all students will benefit from choice and transparency.

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

The Secretary of the Department certified that these final regulations 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

The Department did not address the Act in the final rule. In its submission to us, the Department indicated that it did not prepare a written statement under section 202 of 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 14, 2018, the Department published the proposed rule. 83 Fed. Reg. 40167. In response to the proposed rule, the Department received comments from 13,921 parties and the Department responded to those comments in the final rule. The Department's response grouped the comments by subject, such as scope and purpose, whether there is a need to define gainful employment, protecting students, and accountability.

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

The Department states that the final regulations will rescind the GE regulations, which will eliminate the burden as assessed to the GE regulations in previously approved information requests. The Department states that it will prepare information collection requests, which will be published in the *Federal Register* upon the effective date of the final rule, to discontinue the currently approved information collections found under Office of Management and Budget (OMB) Control Numbers: 1845-0107, 1845-0121, 1845-0122, and 1845-0123, with a total combined burden of 6,925,628 hours.

Statutory authorization for the rule

The Department cited as authority for this final rule sections 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c of title 20, United States Code.

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

The Department determined that this final rule is economically significant under the Order and stated that the rule is subject to review by OMB.

Executive Order No. 13,132 (Federalism)

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