



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

B-331654

December 11, 2019

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
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 Priority for Discretionary Grant Programs*

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 “Final Priority for Discretionary Grant Programs” (RIN: 1875-AA12). We received the rule on December 2, 2019. It was published in the *Federal Register* as final priority on November 27, 2019. 84 Fed. Reg. 65300. The effective date of the rule is December 27, 2019.

This rule was published as a final priority. It announces the Department’s policy of prioritizing grants that support alignment between the Department’s discretionary grant investments and the Opportunity Zones initiative. This final priority applies to the Department’s discretionary grant programs. Under this priority an applicant must demonstrate one or more of the following: (1) the area in which the applicant proposes to provide services overlaps with a Qualified Opportunity Zone; (2) the applicant is located in a Qualified Opportunity Zone; or (3) the applicant has received, or will receive by a date specified by the Department, an investment, including access to real property, from a Qualified Opportunity Fund.

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). The House of Representatives received the final priority on November 22, 2019. 165 Cong. Rec. H9219 (daily ed. Dec. 3, 2019). The final priority was published in the *Federal Register* on November 27, 2019. 84 Fed. Reg. 65300. The Senate received the final priority on November 27, 2019. 165 Cong. Rec. S6822 (daily ed. Dec. 3, 2019). The final priority has a stated effective date of December 27, 2019. Therefore the final priority 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Amanda Amann  
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  
“FINAL PRIORITY FOR DISCRETIONARY GRANT PROGRAMS”  
(RIN: 1875-AA12)

(i) Cost-benefit analysis

The Department of Education (Department) believes that this regulatory action does not impose significant costs on eligible entities, whose participation in discretionary grant programs is voluntary. The Department stated that the benefits of the priority outweigh any associated costs because it would result in the Department's discretionary grant programs selecting high-quality applications to implement activities that are designed to increase education opportunities and improve education outcomes while also targeting investment in the nation's most economically distressed communities. The Department also believes that the costs imposed on applicants by the priority would be limited paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition.

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

The Department certifies that this final priority 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

The final priority does not discuss the Act. In its submission to us, the Department indicated that it did not prepare a written statement under the Act.

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

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

On July 29, 2019, the Department published a proposed priority. 84 Fed. Reg. 36504. The Department received comments from 11 parties. The Department grouped the major issues according to subject and responded to comments, but did not address comments that raised concerns not directly related to the proposed priority.

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

This final priority does not discuss PRA. In its submission to us, the Department indicated that it did not prepare a written statement under PRA.

Statutory authorization for the rule

The Department promulgated this final priority pursuant to section 1221e-3 of title 20, United States Code.

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

The Department determined that this final priority is economically significant under the Order and is subject to review by the Office of Management and Budget.