



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

B-332557

October 6, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, 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: Distance Education and Innovation*

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 “Distance Education and Innovation” (RIN: 1840-AD38). We received the rule on September 21, 2020. It was published in the *Federal Register* as a final regulations on September 2, 2020. 85 Fed. Reg. 54742. The effective date of the rule is July 1, 2021.

The final rule amends the general, establishing eligibility, maintaining eligibility, and losing eligibility sections of the Institutional Eligibility regulations issued under the Higher Education Act of 1965, as amended, Pub. L. No. 89-329, 79 Stat. 1219 (Nov. 8, 1965) (HEA), related to distance education and innovation. In addition, Education states that the rule amends the Student Assistance General Provisions regulations issued under HEA.

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, 2021. However, Education states in the rule that the Secretary of Education is exercising her authority under section 482(c) of HEA to designate the changes to regulations at title 34, parts 600, 602, and 668 of the Code of Federal Regulations for early implementation beginning on September 2, 2020, at the discretion of each institution, or agency, as appropriate. Education states that it will implement the regulations as soon as possible after the implementation date and will publish a separate notice announcing the timing of the implementation. Otherwise, the rule is effective July 1, 2021. The rule did not address the impact of a designation of early

implementation under section 482(c) of HEA on the 60-day delay requirement of the Congressional Review Act.

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. 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, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Amanda Amann
Deputy 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
“DISTANCE EDUCATION AND INNOVATION”
(RIN: 1840-AD38)

(i) Cost-benefit analysis

The Department of Education (Education) stated that the benefits of this final rule include (1) updating and clarifying definitions of key terms related to distance education, correspondence courses, direct assessment, and competency-based programs to support the continued development of these innovative educational methods; (2) identifying a disbursement process for a subscription model for competency-based education so schools know how their students can access title IV aid for them, removing one potential barrier to growth of such programs; and (3) eliminating references to outdated technologies and making the regulations flexible enough to accommodate further technological advancements. Education estimated that new students attracted to new competency-based or other programs developed, in part, because of the clarity created by the rule will have a net federal budget impact over the 2020-2029 loan cohorts of \$-237 million in outlays in the primary estimate scenario and an increase in Pell Grant outlays of \$1,021 million over 10 years, for a total net impact of \$784 million.

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

Education prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a description of the reasons that actions by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the regulations; (3) a description of and, where feasible, an estimate of the number of small entities to which the regulations will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the regulations, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; (5) identification, to the extent practicable, of all relevant federal regulations that may duplicate, overlap, or conflict with the regulations; and (6) alternatives considered.

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

This final rule did not discuss the Act. In its submission to us, Education indicated that a written statement under section 202 of the Act was not applicable.

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

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

Education stated that this final rule was developed through negotiated rulemaking. On April 2, 2020, Education published a notice of proposed rulemaking. 85 Fed. Reg. 18638. The negotiated rulemaking committee reached consensus on the proposed regulations. Education

received 238 comments. The final rule contains an analysis of the comments and of the changes to the regulations since the proposed rulemaking.

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

Education determined that this final rule contains information collection requirements under the Act. Education stated that the total burden hours and total change in burden hours associated with the Office of Management and Budget (OMB) control numbers (1845-NEW1; 1845-NEW2; 1845-0096) is 18 hours, zero hours, and -2,808 hours, respectively. Therefore, according to Education, the rule has a net reduction in burden of 2,790 hours.

Statutory authorization for the rule

Education promulgated this final rule pursuant to sections 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099b, 1099c, 1099c-1, 1221-3, and 1231a of title 20, United States Code.

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

OMB determined that this final rule is an economically significant action under the Order.

Executive Order No. 13,132 (Federalism)

Education stated that it noted in the notice of proposed rulemaking that parts 600 and 668 may have federalism implications and encouraged state and local officials to review and provide comments on this final rule. Education stated it discussed any comments it received on this subject in this final rule.