

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

B-333274

May 20, 2021

The Honorable Patty Murray  
Chair  
The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

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

Subject: *Department of Education: American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund*

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 "American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund" (RIN: 1810-AB64). We received the rule on May 6, 2021. It was published in the *Federal Register* as interim final requirements on April 22, 2021. 86 Fed. Reg. 21195. The effective date is April 22, 2021.

According to the Department, this action establishes interim final requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund, under section 2001 of the American Rescue Plan Act of 2021. *See generally* Pub. L. No. 117-2, 135 Stat. 4 (March 11, 2021). The Department stated that these requirements are intended to promote accountability, transparency, and the effective use of funds by: ensuring that each state educational agency (SEA) meaningfully engages in stakeholder consultation and takes public input into account in the development of its ARP ESSER plan; ensuring that each local educational agency (LEA) develops a plan for the use of its ARP ESSER funds and engages in meaningful consultation and seeks public input as it develops the LEA ARP ESSER plan; and clarifying how an LEA must meet the statutory requirement to develop a plan for the safe return to in-person instruction and continuity of services.

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 60-day delay in effective date can be waived, however, if the agency finds for good cause that a delay would be impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although the Department did not specifically mention CRA's 60-day delay in effective date requirement, the Department

stated that notice and comment procedures are unnecessary for this action, and the Department asserts that it found good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act. The Department stated that waiving notice and comment procedures would facilitate the rapid administration of the ARP ESSER program and the distribution of funds that are needed to address the immediate needs of students, educators, schools, LEAs, and SEAs due to the coronavirus disease 2019 pandemic. The Department stated that, for the same reasons, it is foregoing a delay in effective date for this action under section 553(d)(3) of the Administrative Procedure Act.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Amanda Amann  
Deputy Assistant General Counsel  
for Regulator 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  
“AMERICAN RESCUE PLAN ACT ELEMENTARY AND  
SECONDARY SCHOOL EMERGENCY RELIEF PLAN”  
(RIN: 1810-AB64)

(i) Cost-benefit analysis

The Department of Education (Department) conducted a cost-benefit analysis of the interim final requirements in this action. The Department determined that the total estimated cost for state and local education agencies to satisfy the interim requirements is \$261.1 million. The Department stated that it estimates the total in transfers from the government to program participants to be approximately \$122 billion.

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

The Department stated that the RFA does not apply to this rulemaking because there is good cause to waive notice-and-comment rulemaking under the Administrative Procedure Act.

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

In its submission to us, the Department indicated that it did not conduct an Unfunded Mandates Reform Act analysis.

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

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

The Department stated that notice and comment procedures are unnecessary for this action because it found good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act. The Department provided several reasons for its determination of good cause to waive notice and comment procedures. In sum, the Department asserts that these requirements will help facilitate the administration of the American Rescue Plan Elementary and Secondary School Emergency Relief program and the disbursement of funds that are needed to address the immediate needs of students, educators, schools, and state and local education agencies due to the coronavirus disease 2019 pandemic. The Department stated that, for the same reasons, it is foregoing a delay in effective date for this action under section 553(d)(3) of the Administrative Procedure Act.

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

The Department determined that these interim final requirements contain information collection requirements (ICRs) under the Act. The Department stated that it requested emergency paperwork clearance from the Office of Management and Budget (OMB) for the ICRs

associated with these interim final requirements. The Department estimates that these new ICRs will result in a total estimated cost of \$198,791,800 and a total estimated burden of 2,037,956 hours to the public annually.

Statutory authorization for the rule

The Department promulgated these interim final requirements pursuant to the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat 4 (Mar. 11, 2021).

Executive Order No. 12866 (Regulatory Planning and Review)

The Department stated that these interim final requirements are economically significant and subject to review by OMB.

Executive Order No. 13132 (Federalism)

In its submission to us, the Department indicated that it did not conduct the federalism analysis provided for under the Order.