

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

B-333310

June 4, 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  
Ranking Member  
Committee on Education and Labor  
House of Representatives

Subject: *Department of Education: Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief 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 (Education) entitled "Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs" (RIN: 1840-AD62). We received the rule on May 24, 2021. It was published in the *Federal Register* as final regulations on May 14, 2021. 86 Fed. Reg. 26608. The effective date is May 14, 2021.

According to Education, the final rule amends prior Education regulations so that an institution of higher education (IHE) may appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the Higher Education Emergency Relief (HEERF) programs, as originally enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020). Education states that the final rule defines "student," as used in the HEERF programs, as any individual who is or was enrolled at an eligible institution on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease.

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 delay is 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). Education states that in light of the current economic challenges facing many students as a result of the COVID-19 crisis, the 60-day delay would be contrary to the public interest. Education indicates that the final rule will enable institutions to distribute emergency funds to all eligible students in an expedient manner,

effectuating the public interest at issue, which Education describes as addressing exigent need due to the national pandemic.

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, reading "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  
“ELIGIBILITY TO RECEIVE EMERGENCY FINANCIAL AID GRANTS  
TO STUDENTS UNDER THE HIGHER EDUCATION  
EMERGENCY RELIEF PROGRAMS”  
(RIN: 1840-AD62)

(i) Cost-benefit analysis

The Department of Education (Education) conducted an economic analysis of the final rule. Education estimated that the total cost to students of applying for aid under the rule will be \$22.4 million at a wage rate of \$17.50, and the total cost to institutions will be \$1,203,622 at a wage rate of \$46.87. Education estimated total Coronavirus Aid, Relief, and Economic Security (CARES) Act Higher Education Emergency Relief Fund (a)(1) allocations at \$12,507,254,503; total Coronavirus Response and Relief Supplemental Appropriations Act (a)(1) and (a)(4) allocations at \$21,199,216,249; and total American Rescue Plan Act (a)(1) and (a)(4) allocations at \$36,417,804,400. Education also included an estimate of transfers, which Education noted flow from the federal government to eligible students and are processed through institutions. As a non-quantified benefit, Education stated that assistance may support students continuing in their programs.

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

Education certified that this final rule will not have a significant negative 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

In its submission to us, Education indicated that it considered preparation of an analysis of actions relevant to the Act in this final rule to be not applicable.

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

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

Education found good cause to waive the notice and comment rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B). Education stated that the urgent economic challenges facing many students as a result of the ongoing COVID-19 crisis make it contrary to the public interest for Education to undertake normal notice and comment rulemaking procedures.

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

Education determined that this final rule contains information collection requirements (ICRs) under the Act. The total burden estimate for the ICRs for institutions receiving funds is 25,680 hours, and for students receiving funds is 1,280,908 hours. Education received emergency approval for the ICRs under OMB Control Number 1840-0857.

Statutory authorization for the rule

Education promulgated this final rule pursuant to sections 1001-1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c-1, 1221-3, 1221e-3, 1231a, and 3474 of title 20, United States Code; as well as section 314 of Public Law 116-260; section 18004 of Public Law 116-136; and section 2003 of Public Law 117-2.

Executive Order No. 12866 (Regulatory Planning and Review)

Education determined that this final rule is economically significant as measured by the \$100 million threshold in the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

Education stated that it solicited comments in the interim final rule on whether the rule may have federalism implications and encouraged state and local elected officials to review and provide comments. Education stated that it discussed any comments received in this final rule.