

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

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July 1, 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: Repeal of the William D. Ford Federal Direct Loan Program Subsidized Usage Limit Restriction*

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 “Repeal of the William D. Ford Federal Direct Loan Program Subsidized Usage Limit Restriction” (RIN: 1840-AD60). We received the rule on June 17, 2021. It was published in the *Federal Register* as final regulations on June 14, 2021. 86 Fed. Reg. 31432. The effective date is August 13, 2021.

According to the Department, the Secretary of Education, through this action, removed and amended regulations to conform with changes made by the Consolidated Appropriations Act, 2021. See *generally* Pub. L. No. 116-260, 134 Stat. 1182 (Dec. 27, 2020). The Department stated that the Secretary removed the subsidized usage loan limit restriction (SULA) for any borrower who receives a Federal Direct Stafford Subsidized Loan first disbursed on or after July 1, 2021, regardless of the award year associated with the loan. The Department also stated that all subsidy benefits will be reinstated retroactively to the date on which the loss of subsidy was applied for all Federal Direct Stafford Subsidized Loans with an outstanding balance on July 1, 2021, and for all award years since the 2013–2014 award year. Lastly, the Department stated further that the Secretary also removed regulations related to SULA and made other technical changes.

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. § 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 were unnecessary for this final regulatory action and that it found good cause to waive such procedures under section 553(b)(3)(B) of the Administrative Procedure Act. The Department asserts that this there is good cause to waive notice-and-comment because this final regulatory action removes regulations for which the statutory authority has been repealed. Additionally, the Department stated that this final regulatory action adopts no new regulations and does not establish or affect substantive policy. The Department noted that notice-and-comment rulemaking is unnecessary because it does not have discretion to retain these regulatory provisions or implement in a different manner, regardless of public opinion and input. Therefore, according to the Department, the Secretary, under 5 U.S.C. § 553(b)(B)(3), has determined that proposed regulations are unnecessary, and, thus, waived notice-and-comment rulemaking.

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 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  
“REPEAL OF THE WILLIAM D. FORD FEDERAL DIRECT  
LOAN PROGRAM SUBSIDIZED USAGE LIMIT RESTRICTION”  
(RIN: 1840-AD60)

(i) Cost-benefit analysis

The Department of Education (Department) provided an accounting statement for this final regulatory action. The Department stated that there would be a reduction in paperwork burden on students and institutions from elimination of subsidized usage limit information in entrance and exit counseling requirements. The Department estimates this benefit to be \$4.8 million at both a 3 percent and 7 percent discount rate. The Department also stated that costs to modify government systems for administering student loans to implement repeal of the subsidized usage loan restriction would be \$.06 million at a 7 percent discount rate and \$.05 million at a 3 percent discount rate. The Department stated further that there would be an increase in transfers of subsidized loans to eligible students. The transfers would amount to \$96.2 million at a 7 percent discount rate and \$98.7 million at a 3 percent discount rate. Lastly, the Department stated that the restoration of subsidized loan benefits to affected borrowers would transfer \$85.4 million at a 7 percent discount rate and \$82.7 at a 3 percent discount rate.

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

The Department stated that RFA does not apply to this final regulatory action because there was good cause to waive notice-and-comment procedures under 5 U.S.C. § 553.

(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 considered preparation of an analysis of the costs and benefits of this final regulatory action 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.*

According to the Department, there is good cause to waive notice-and-comment procedures in this case because this final regulatory action removes regulations for which the statutory authority has been repealed. The Department stated that this final regulatory action adopts no new regulations and does not establish or affect substantive policy. The Department noted that notice-and-comment rulemaking is unnecessary because the Department does not have discretion to retain these regulatory provisions or implement in a different manner, regardless of public opinion and input. Therefore, according to the Department, the Secretary, under 5 U.S.C. §553(b)(B)(3), has determined that proposed regulations are unnecessary, and, thus, waived notice-and-comment rulemaking.

The Department also explained that, under section 492 of the Higher Education Act of 1965 (HEA), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. See *generally* 20 U.S.C. § 1098a. However, according to the Department, section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when its use would be impracticable, unnecessary, or contrary to the public interest. The Department asserts that there is good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice-and-comment rulemaking is unnecessary in this case.

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

The Department stated that this final regulatory action does not create any new information collection requirements. The Department noted that this final regulatory action removes requirements related to the subsidized loan usage limit that was repealed by section 705(a) of the Consolidated Appropriations Act, 2021. Pub. L. No. 116-260 § 705(a), 134 Stat. 1182, 3200 (Dec. 27, 2020). According to the Department, the total burden hours is estimated to decrease by \$188,079 and the total decrease in cost is estimated to be \$4,742,901. This burden was associated with the information collection entitled, “William D. Ford Federal Direct Loan Program – 150% Limitation,” Office of Management, and Budget (OMB) Control Number 1845-0116.

Statutory authorization for the rule

The Department promulgated this final regulatory action pursuant to section 2401 of title 28; sections 1070g, 1087a, *et seq.*, of title 20; and section 3702 of title 31, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Department stated that OMB has determined that this final regulatory action is an economically significant action and would have an annual effect on the economy of more than \$100 million.

Executive Order No. 13132 (Federalism)

The Department did not specifically reference the Order, but stated that it had determined that this final regulatory action would not unduly interfere with state, local, or tribal governments in the exercise of their governmental functions.