

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

B-333497

August 19, 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: Final Requirements; American Rescue Plan Act Homeless Children and Youth Program*

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 Requirements; American Rescue Plan Act Homeless Children and Youth Program" (RIN: 1801-AA24). We received this final rule on August 9, 2021. It was published in the *Federal Register* as final requirements on July 9, 2021. 86 Fed. Reg. 36222. The effective date is July 9, 2021.

According to the Department, this final rule provides requirements for the Homeless Children and Youth program (ARP-HCY), under section 2001(b)(1) of The American Rescue Plan Act of 2021. See *generally* Pub. L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021). The Department stated that these requirements are intended to clarify program requirements and streamline and clarify the process for state educational agencies (SEA) to award subgrants to local educational agencies (LEA).

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). Here, although the Department did not specifically mention CRA's 60-day delay in effective date requirement, it stated that there is good cause to waive notice and comment rulemaking and a delayed effective date under the Administrative Procedure Act, 5 U.S.C. §§ 553(b)(3)(B), (d)(3). In particular, the Department stated that it waived these requirements due to the urgent needs of children and youth experiencing homelessness in light of the national pandemic, because going through the full rulemaking process would delay the awarding of ARP-HCY grants to SEAs and LEAs.

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 rules. 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 this final 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
“FINAL REQUIREMENTS; AMERICAN RESCUE PLAN ACT
HOMELESS CHILDREN AND YOUTH PROGRAM”
(RIN: 1801-AA24)

(i) Cost-benefit analysis

The Department of Education (Department) stated that it prepared an accounting table showing the classification of the expenditures associated with the provisions of this final rule. The Department stated further that the accounting table provides its best estimate of the federal payments to be made to state educational agencies (SEA) as a result of this final rule. In addition, the Department stated that expenditures are classified as transfers to those entities. The Department estimates the annual cost for local educational agencies (LEAs) to apply for the grants to be \$10.5 million and the annual monetized transfers from the federal government to SEAs to be \$799 million.

(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 final rule because there is good cause to waive notice and comment 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 the Act was not applicable to this final rule.

(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 there is good cause to waive notice and comment rulemaking and the delay of the effective date requirement under the Act. The Department stated further that it waived these requirements due to the urgent needs of children and youth experiencing homelessness in light of the national pandemic, because going through the full rulemaking process would delay the awarding of grants to SEAs and LEAs.

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

The Department determined that this final rule contains information collection requirements under the Act. The Department stated that the information collection activities under this action will result in a total estimated cost of \$10,253,300 and a total estimated burden of 113,644 hours to the public annually. The Department stated that it is requesting emergency paperwork clearance from the Office of Management and Budget.

Statutory authorization for the rule

The Department promulgated this final rule pursuant to section 2001 of The American Rescue Plan Act. Pub. L. No. 117-2, § 2001, 135 Stat. 4, 19–22 (Mar. 11, 2021).

Executive Order No. 12866 (Regulatory Planning and Review)

The Department stated that this final rule is an economically significant final rule.

Executive Order No. 13132 (Federalism)

In its submission to us, the Department indicated the Federalism Order is not applicable to this final rule.