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United States Government Accountability Office
Washington, DC 20548

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January 22, 2010

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable John Kline
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: School Improvement Grants; American Recovery and Reinvestment Act of 2009 (ARRA); Title I of the Elementary and Secondary Education Act of 1965, as Amended (ESEA)*

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 “School Improvement Grants; American Recovery and Reinvestment Act of 2009 (ARRA); Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)” (RIN: 1810-AB06). We received the rule on January 12, 2010. It was published in the *Federal Register* as “final requirements for School Improvement Grants authorized under section 1003(g) of Title I of the ESEA” on December 10, 2009, with an effective date of February 8, 2010. 74 Fed. Reg. 65,618.

The final rule allows a local educational agency (LEA) to use school improvement funds to serve persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds and Title I schools in improvement, corrective action, and restructuring that are not among the persistently lowest-achieving schools. Education notes that the final requirements govern the process that a state educational agency (SEA) uses to award school improvement funds to LEAs with the persistently lowest-achieving Title I schools and that demonstrate the greatest need for the funds and the strongest commitment to use those funds to raise substantially the achievement of the students attending those schools. Education states that the final requirements require an SEA to award school improvement funds to eligible

LEAs in amounts sufficient to enable the persistently lowest-achieving schools to implement one of four specific school intervention models.

The final rule has an effective date of February 8, 2010. 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 rule was published in the *Federal Register* on December 10, 2009, but we did not receive the rule until January 12, 2010. Therefore, the final rule does not have the required 60-day delay in its effective date.

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. Our review of the procedural steps taken indicates that, except for the delay in effective date, Education generally complied with the applicable requirements set out in the provisions but did not address the Unfunded Mandated Reform Act in the final regulations.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth A.M. McFadden
Assistant General Counsel for
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
"SCHOOL IMPROVEMENT GRANTS; AMERICAN RECOVERY
AND REINVESTMENT ACT OF 2009 (ARRA);
TITLE I OF THE ELEMENTARY AND
SECONDARY EDUCATION ACT OF 1965, AS AMENDED (ESEA)"
(RIN: 1810-AB06)

(i) Cost-benefit analysis

Education has assessed the potential costs and benefits and determined that the benefits exceed the costs. Education believes that the requirements will not impose significant costs on states, LEAs, or other entities that receive school improvement funds. Education states that these requirements will drive school improvement funds to LEAs that have persistently lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. Education will also require participating LEAs to adopt the most effective approaches to turning around persistently lowest-achieving schools. In short, Education believes that the requirements will ensure that limited school improvement funds are put to their optimum use—that is, that they will be targeted to where they are most needed and used in the most effective manner possible. Education notes that the benefits, then, will be more effective schools serving children from low-income families and a better education for those children.

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

Education certifies that these final requirements will not have a significant economic impact on a substantial number of small entities. Approximately 11,900 LEAs that receive Title I funds qualify as small entities under the U.S. Small Business Administration's Size Standards. Education notes, however, the small entities that these final requirements will affect are small LEAs receiving school improvement funds under section 1003(g) of the ESEA. Preliminary data analyses by Education suggest there would be a range of 150 to 250 small LEAs affected by the final requirements in this notice, including a limited number of small suburban and urban LEAs. Education states that the final requirements in this notice would not have a significant economic impact on these small LEAs because (1) the costs of implementing the required interventions would be covered by the grants received by successful applicants, and (2) in most cases, the costs of developing plans for the interventions and submitting applications would not be significantly higher than the costs that would be incurred in applying for School Improvement Grants under the

statutory requirements. In addition, Education believes the benefits provided under this regulatory action will outweigh the burdens on these small LEAs of complying with the final requirements. In particular, Education notes the requirements potentially make available to eligible small LEAs significant resources to make the fundamental changes needed to turn around a persistently lowest-achieving school, resources that otherwise may not be available to small and often geographically isolated LEAs.

(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 the Comptroller General, Education did not include an analysis of the final regulations under this Act.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On August 26, 2009, Education published a notice of proposed requirements for this program. 74 Fed. Reg. 43,101. Education received comments from 182 parties, which are addressed in the final rule. 74 Fed. Reg. 65,621.

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

This notice contains information collection requirements that are subject to review by the Office of Management and Budget (OMB). Education has received emergency approval for the information collections under the requirements described in the notice under OMB Control Number 1810-0682.

Statutory authorization for the rule

Education states the final rule is authorized by section 1003(g) of Title I of the ESEA. 20 U.S.C. § 6303(g). Education notes that funding is provided through both the Department of Education Appropriations Act, 2009 and the American Recovery and Reinvestment Act of 2009.

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

Education has determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is “economically significant” and subject to OMB review.