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United States Government Accountability Office
Washington, DC 20548

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March 25, 2010

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

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

Subject: *Department of Education: Investing in Innovation 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 (Education), entitled “Investing in Innovation Fund” (RIN: 1855-AA06). We received the rule on March 5, 2010. It was published in the *Federal Register* as “final priorities, requirements, definitions, and selection criteria” on March 12, 2010. 75 Fed. Reg. 12,004. The final rule is effective May 11, 2010.

The final rule establishes priorities, requirements, definitions, and selection criteria under the Investing in Innovation Fund. The Investing in Innovation Fund provides funding support to local educational agencies (LEAs) and nonprofit organizations in a partnership with one or more LEAs or a consortium of schools with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

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 Education complied with the applicable requirements.

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
"INVESTING IN INNOVATION FUND"
(RIN: 1855-AA06)

(i) Cost-benefit analysis

Education believes that the costs associated with the final rule would be limited to the paperwork burden related to preparing an application, and that the benefits of the rule would outweigh any costs incurred by applicants. Education believes that the benefits of the final rule would be priorities, requirements, definitions, and selection criteria that would result in the selection of high-quality applications that are most likely to have a significant national impact on educational reform and improvement. Education estimates that the final rule will result in associated expenditures of \$643 million from the federal government to local educational agencies (LEAs) and nonprofit organizations.

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

Education certified that this final rule will not have a significant 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

Education does not address the Unfunded Mandates Reform Act in the final rule. However, the final rule sets forth priorities, requirements, definitions, and selection criteria for federal grants and does not mandate that organizations apply for these grants.

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

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

Education published a notice of proposed priorities, requirements, definitions, and selection criteria on October 9, 2009. 74 Fed. Reg. 52,214. Education received comments from 346 commenters on the proposed rule and responded to comments in the final rule. 75 Fed. Reg. 12,004.

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

The final rule contains information collection requirements under the Paperwork Reduction Act, and Education received emergency approval for the collections under OMB Control No. 1855-0021. Education estimates that there will be 12,000 burden hours for Scale-up applications (100 applicants at 120 hours each); 60,000 burden hours for Validation grants (500 applicants at 120 hours each); and 120,000 burden hours for Development grants (1,000 applicants at 120 hours each). Education estimates that the total burden for all applicants will be 192,000 hours at a cost of approximately \$4.8 million.

Statutory authorization for the rule

The final rule is authorized by section 14007 of the American Recovery and Reinvestment Act of 2009.

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

The final rule was determined to be an economically significant regulatory action and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

Education does not directly address Executive Order 13,132 in the final rule. However, Education states as part of the analysis under Executive Order No. 12,866 that the final rule will not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.