



United States Government Accountability Office
Washington, DC 20548

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January 17, 2012

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

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

Subject: *Department of Education: Race to the Top Fund Phase 3*

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 “Race to the Top Fund Phase 3” (RIN:1894-AA01). We received the rule on December 30, 2011. It was published in the *Federal Register* as a notice of final requirements on November 16, 2011. 76 Fed. Reg. 70,986.

The notice announces requirements for Phase 3 of the Race to the Top program. In this phase, Education plans to make awards to states that were finalists but did not receive funding under the Race to the Top Fund Phase 2 competition held in fiscal year 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. sect. 801(a)(3)(A). This notice of final requirements was published on November 16, 2011, and it was received by GAO on December 30, 2011. This notice of final requirements has a stated effective date of November 16, 2011. Therefore, this final rule does not have a 60-day delay in its effective date. However, any rule that an agency for good cause finds that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines.

5 U.S.C. sect. 808(2). Education found that delay in effective date would be contrary to the public interest and therefore found good cause to waive the delay for this notice of final requirements.

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: Shannan E. Higgins
Acting 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
"RACE TO THE TOP FUND PHASE 3"
(RIN: 1894-AA01)

(i) Cost-benefit analysis

Education performed a cost-benefit analysis in conjunction with the notice of final requirements and determined that the final requirements will not impose significant additional costs to state applicants or the federal government. Most of the requirements involve re-affirming the commitments and plans already completed as part of the 2010 Race to the Top Phase 2 competition or other federal education programs. Other final requirements, in particular those related to maintaining conditions for reform required under the Race to the Top Phase 2 competition, require continuation of existing commitments and investments rather than the imposition of additional burdens and costs. Education stated that it believes states will incur minimal costs in developing plans and budgets for implementing selected activities from their Race to the Top Phase 2 proposals, because in most cases such planning will entail revisions to existing plans and budgets already developed as part of the Race to the Top Phase 2 application process, and not the development and implementation of entirely new plans and budgets. Education determined that the benefits resulting from these requirements will exceed their costs.

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

The Secretary of Education certified that the regulatory action 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

The notice of final requirements does not address the Unfunded Mandates Reform Act (UMRA). The UMRA applies to rules that include any federal mandate that may result in expenditure by state, local, or tribal governments, in the aggregate, of \$100 million or more. The notice describes information and assurances that applicants must provide in order to receive grant awards from the Race to the Top Fund Phase 3.

(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 requirements in the *Federal Register* on September 12, 2011 (76 Fed. Reg. 56,183) and a notice correcting the notice of proposed requirements on September 23, 2011 (76 Fed. Reg. 59,124). Education received 10 comments on the notice of proposed requirements, and summarized and responded to those comments in the notice of final requirements. 76 Fed. Reg. 70,986. Education found “good cause” under section 553(d)(3) of title 5, allowing the notice of final requirements to take effect immediately upon publication.

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

The Paperwork Reduction Act defines a “collection of information” as “answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States...” 44 U.S.C. § 3502(3)(A)(i). Because there are fewer than 10 eligible applicants for Race to the Top Phase 3 awards, the requirements in the regulatory action are not collections of information under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice of final requirements is authorized by the American Recovery and Reinvestment Act of 2009, Div. A., section 14006, Pub. L. No. 111-5, as amended by section 310 of Div. D, Title III of the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, and section 1832(a)(2) of the Department of Defense and Full-Year Continuing Appropriations Act of 2011, Pub. L. No. 112-10.

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

Education determined that the notice of final requirements is economically significant under Executive Order No. 12,866, and it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

Education determined that the regulatory action would not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.