



United States Government Accountability Office
Washington, DC 20548

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July 27, 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: Federal Pell Grant 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 (Education), entitled “Federal Pell Grant Program” (RIN: 1840-AD11). We received the rule on July 13, 2012. It was published in the *Federal Register* as an interim final rule; request for comments on May 2, 2012. 77 Fed. Reg. 25,893.

The interim final rule amends sections of the Federal Pell Grant Program regulations to make them consistent with recent changes in the law that prohibit a student from receiving two consecutive Pell Grants in a single award year.

The interim final rule is effective on May 2, 2012. 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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, Education believes it has good cause to make the interim final rule effective on publication because it merely reflects statutory changes and removes

obsolete regulatory provisions and, in the case of new § 690.64, protects students from receiving reduced amounts of Pell Grant funds.

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: Michael Gross
Assistant General Counsel for Regulatory
Services, Office of the General Counsel
Department of Education

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
"FEDERAL PELL GRANT PROGRAM"
(RIN: 1840-AD11)

(i) Cost-benefit analysis

The interim final regulations remove the regulatory provisions related to the option of receiving two Pell Grants in one year, an option that was eliminated by section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. This option was originally authorized by the Higher Education Opportunity Act (HEOA) and was first available in the 2009–2010 award year (AY). Education believes that the interim final regulations generally restore the longstanding policy related to the timing and availability of Pell Grants within an AY as it existed before the 2009–2010 AY.

Education summarizes the effects the interim final regulations are likely to have on the federal student aid programs, institutions of higher education, and students. According to Education's estimates, the elimination of the option for two Pell Grants in one year will remove the eligibility of about 1.9 million students annually and reduce costs in the program by approximately \$24.3 billion over 5 years. When discounted at a 3 percent rate and a 7 percent rate, Education states that this reduces costs in the Pell Grant Program over 5 years by \$22.2 billion and \$19.7 billion, respectively. Education notes that the estimated maximum revenue loss to institutions would be approximately \$24.3 billion over 5 years from AY 2011–2012 to AY 2015–2016. However, Education believes that it is likely that a significant portion of this revenue would be shifted to other sources or be captured over a different time period, so the cost to institutions from the statutory changes should be much less. According to Education, the exact effect on institutions cannot be quantified, but it is likely to be substantially lower than the \$24.3 billion discussed above. For students, Education estimates that approximately \$5 billion in grant aid to almost 2 million students annually would need to be made up through other sources.

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

Education states that the interim final regulations affect institutions that participate in Title IV, Higher Education Act of 1965, as amended (HEA programs), and individual Pell Grant recipients. According to Education, the effect of the elimination of two

Pell Grants in one year will depend on the extent students replace the funds from other sources or change their academic plans, the distribution of recipients of a second Pell Grant, and the alternative use of the funds. Education's Initial Regulatory Flexibility Analysis presents an estimate of the effect on small institutions of the statutory changes implemented through the interim final regulations.

(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 interim final regulations under the Act.

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

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

Education generally offers interested parties the opportunity to comment on proposed regulations, however, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Education believes there is good cause here for waiving notice and comment to amend the current § 690.64 because a delay in making this regulatory change will cause some students to lose some of their Pell Grant eligibility and is contrary to the public interest. Additionally, Education believes notice and comment to amend §§ 690.63, 690.65, and 690.67 are unnecessary because it is merely updating these sections to reflect statutory changes in Public Law 112–10 that prohibit a student from receiving two Pell Grants in a single award year. Accordingly, Education states that it has good cause to waive rulemaking with respect to the removal of these regulatory provisions.

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

Education states that these interim final regulations do not create any information collection requirements. With the removal of §§ 690.63(h) and 690.67 and the revision of § 690.64, due to the statutory changes, Education notes that the paperwork burden associated with those sections are also removed. According to Education, this change results in the discontinuation of information collection 1845–0098 and, therefore, the elimination of 109,605 burden hours associated with that collection.

Statutory authorization for the rule

Education states that the interim final regulations are made under the authority set forth in 20 U.S.C. § 1070a and 1070g, unless otherwise noted.

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

Education states that the statutory elimination of the two Pell Grant option as reflected in this regulatory action is economically significant subject to review by the Office of Management and Budget under section 3(f)(1) of Executive Order 12,866.