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November 20, 2008

The Honorable Edward M. Kennedy
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 Howard P. “Buck” McKeon
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan 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 Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program” (RIN: 1840-AC94). We received the rule on November 6, 2008. It was published in the *Federal Register* as “final regulations” on October 23, 2008. 73 Fed. Reg. 63,232. The rule has a stated effective date of July 1, 2009; however, institutions, lenders, guarantee agencies, and loan services may choose to implement certain provisions on or after November 1, 2008, at their discretion.

The final rule amends the regulations governing the Federal Perkins Loan Program, the Federal Family Education Loan Program, and the William D. Ford Federal Direct Loan Program. This final rule implements various statutory provisions of the College Cost Reduction and Access Act, Pub. L. No. 110-84, 1221 Stat. 784 (Sept. 27, 2007), including the establishment of the Income-Based Repayment plan and the Public Service Loan Forgiveness Program. In addition, this final rule implements certain statutory provisions of the Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078 (Aug. 14, 2008).

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 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Elizabeth A.M. McFadden
Assistant General Counsel for
Regulatory Services
Office of 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 PERKINS LOAN PROGRAM, FEDERAL FAMILY
EDUCATION LOAN PROGRAM, AND
WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM"
(RIN: 1840-AC94)

(i) Cost-benefit analysis

The Department of Education (Education) analyzed the costs and benefits of this final rule. Education estimates that the parts of this final rule that implement provisions of the College Cost Reduction and Access Act, Pub. L. No. 110-84, 1221 Stat. 784 (Sept. 27, 2007) (CCRAA) will have a net budget impact of \$650 million in 2008 and \$9.2 billion over fiscal years 2008 to 2012.

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

Education determined that this final rule will not have a significant 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

In its submission to the Comptroller General, Education did not include an analysis of this final rule under the Act. Education noted that the preparation of a written statement under section 202 of the Act was not applicable to this rule.

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

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

Education promulgated this final rule, in part, under the notice-and-comment procedures found in the Administrative Procedures Act. 5 U.S.C. § 553. Education published a proposed rule on July 1, 2008, regarding the parts of this final rule implementing CCRAA. 73 Fed. Reg. 37,694. Education responded to comments from 1,700 parties in the final rule. 72 Fed. Reg. 63,233–43. Education states that there were no significant changes from the proposed rule to the final rule as a result of public comments. Education determined that it was unnecessary to conduct notice-and-comment procedures for the parts of this final rule that implement the Higher

Education Opportunity Act, Pub. L. No. 110-315 (HEOA), because those parts of the rule are required by statute and do not involve agency discretion.

Higher Education Act of 1965, Negotiated Rulemaking, 20 U.S.C. § 1098a(2)

Section 492 of the Higher Education Act of 1965 required that Education engage in negotiated rulemaking for this final rule. Education developed the parts of this final rule implementing CCRAA through the use of negotiated rulemaking. Education did not use negotiated rulemaking for the parts of the rule implementing HEOA for the same reasons it did not use notice-and-comment procedures.

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

This final rule contains new and amended information collection requirements that the Office of Management and Budget (OMB) reviewed under the Act. For the paperwork associated with OMB Control Number 1845-0020, Education estimates that the burden will increase for lenders and guarantee agencies by 31,414 hours. For the paperwork associated with the new OMB Control Number 1845-0086, Education estimates that the burden will increase for borrowers, lenders, and guarantee agencies by 185,778 hours. For the paperwork associated with the new OMB Control Number 1845-0085, Education estimates that the burden will increase for states, non-profit entities, and eligible lender trustees by 105 hours. Education also expects that there will be an increase in burden associated with OMB Control Numbers 1845-0031 and 1845-0017, and will be providing OMB an estimate of the increase in burden by December 2008. Education will also be further submitting two new information collections to OMB for review.

Statutory authorization for the rule

Education promulgated this final rule under the authority of sections 421–429, sections 1071–1087-2, and sections 1087aa–1087hh of title 20, United States Code.

Executive Order No. 12,866

Because it will have an annual effect on the economy of more than \$100 million, Education determined that this final rule is economically significant under the Order and subject to OMB review.