



441 G St. N.W.
Washington, DC 20548

B-334767

November 15, 2022

The Honorable Patty Murray
Chairwoman
The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Bobby Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Education: Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control*

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 (ED) entitled “Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control” (RINs: 1840-AD54, 1840-AD55, 1840-AD66, 1840-AD69). We received the rule on November 3, 2022. It was published in the *Federal Register* as final regulations on October 28, 2022. 87 Fed. Reg. 65426. The effective date is July 1, 2023.

ED states that the final rule amends regulations on the Federal Pell Grant program (Pell Grants), regulations on Title IV Revenue and Non-Federal Education Assistance Funds (the “90/10 Rule”), and regulations on the process for consideration of changes in ownership and control (CIO). First, ED states that the rule amends regulations for Pell Grants for prison education programs (PEPs) to establish eligibility for certain confined or incarcerated individuals consistent with the Consolidated Appropriations Act, 2021, Pub L. No. 116-230, 134 Stat. 1182 (Dec. 27, 2020). Second, ED states that the rule amends 90/10 Rule regulations to implement a statutory change in the American Rescue Plan Act of 2021, Pub L. No. 117-2, 135 Stat. 4 (Mar. 11, 2021), including by amending which non-federal funds can be counted when determining compliance with the 90/10 Rule. Finally, ED states that the rule amends regulations to clarify the process for CIO, to promote compliance with the Higher Education Act of 1965, as amended, Pub. L. No. 89-329, 79 Stat. 1219 (Nov. 8, 1965), and related regulations, and to reduce risk for entities contemplating or undergoing such changes.

Enclosed is our assessment of ED’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Lynn Mahaffie
Assistant General Counsel
Division of 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
“PELL GRANTS FOR PRISON EDUCATION PROGRAMS;
DETERMINING THE AMOUNT OF FEDERAL EDUCATION ASSISTANCE FUNDS
RECEIVED BY INSTITUTIONS OF HIGHER EDUCATION (90/10);
CHANGE IN OWNERSHIP AND CHANGE IN CONTROL”
(RINS: 1840-AD54, 1840-AD55, 1840-AD66, 1840-AD69)

(i) Cost-benefit analysis

The Department of Education (ED) separately analyzed the final rule’s costs and benefits with respect to regulations on Pell Grant prison education programs (PEPs), regulations on Title IV Revenue and Non-Federal Education Assistance Funds (the “90/10 Rule”), and regulations on the process for consideration of changes in ownership and control (CIO).

With respect to PEP regulations, ED stated that incarcerated individuals, taxpayers, and communities would benefit from higher employment and earnings, and lower recidivism rates, due to increased enrollment in higher education programs by incarcerated individuals. ED further estimated that Pell Grant transfers to institutions and students will increase by \$1.1 billion, and that ED will bear increased costs associated with data collection and dissemination, approving PEPs, and reporting to Congress and the public. ED estimated that oversight entities will face increased costs due to required best interest determinations, and that students will face no direct costs.

With respect to the rule’s impact on 90/10 Rule regulations, ED stated that military-connected students will benefit from adjusted recruitment incentives, taxpayers will receive savings in the form of reduced expenditures of title IV, Higher Education Act of 1965 (HEA) funds, and government transfers to educational institutions will be reduced by \$292 million.

With respect to the rule’s impact on CIO regulations, ED stated that the final rule benefitted institutions and ED by clarifying requirements and providing timely feedback for institutions undergoing CIO transactions. ED further stated that the rule posed costs to institutions from compliance duties and the paperwork burden associated with increased reporting and disclosure requirements.

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

ED certified that the 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

In its submission to us, ED indicated that it did not prepare a written statement under section 202 of the Act. ED also stated that the rule would not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.

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

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

On July 28, 2022, ED published a proposed rule. 87 Fed. Reg. 45432. ED received comments from 142 parties and responded to comments in the final rule.

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

ED determined that the rule contains information collection requirements (ICRs) under the Act, and it submitted them to the Office of Management and Budget (OMB) for review. ED provided the following estimates of burdens associated with particular OMB Control Numbers:

OMB Control No.	Time Burden	Cost Burden
1845-0012	ED stated that it will clear burden at a later time.	ED stated that it will clear burden at a later time.
1845-NEW	140 hours	\$6,522.60
1845-0096	39,732 hours	\$1,844,964
1845-0156	4,000 hours	\$186,360
1840-NEW	26,400 hours	\$1,229,976

Statutory authorization for the rule

ED promulgated this final rule pursuant to sections 1001–1003, 1070a, 1070g, 1085, 1088, 1091, 1092, 1094, 1099b, 1099c, 1099c-1, and 1231a of title 20, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

ED determined that the rule is economically significant under the Order and subject to review by OMB.

Executive Order No. 13132 (Federalism)

ED determined that the rule does not have federalism implications under the Order.