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October 26, 2023

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Education: Financial Value Transparency and Gainful Employment*

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 “Financial Value Transparency and Gainful Employment” (RIN: 1840-AD57). We received the rule on October 13, 2023. It was published in the *Federal Register* as final regulations on October 10, 2023. 88 Fed. Reg. 70004. The effective date is July 1, 2024.

ED states that the final rule establishes and amends regulations related to gainful employment to address ongoing concerns about educational programs designed to prepare students for gainful employment in a recognized occupation, but that instead leave them with unaffordable amounts of student loan debt in relation to their earnings, or with no gain in earnings compared to others with no more than a high school education. ED further states that the final rule seeks to enhance transparency by providing information about financial costs and benefits to students at nearly all academic programs at postsecondary institutions that are eligible to participate in title IV of the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (Nov. 8, 1965), as amended.

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.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Hilary Malawar
Deputy General Counsel (Regulations, Legislation, and Ethics)
Department of Education

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF EDUCATION
ENTITLED
“FINANCIAL VALUE TRANSPARENCY AND GAINFUL EMPLOYMENT”
(RIN: 1840-AD57)

(i) Cost-benefit analysis

The Department of Education (ED) analyzed the benefits and costs of this final rule. ED’s analysis of benefits included a discussion of the anticipated benefits to students, institutions, state and local governments, and the federal government. ED’s analysis of costs included a discussion of the anticipated costs to these same entities.

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

ED stated that it anticipates this final rule will have a significant economic impact on a substantial number of small entities. Accordingly, ED prepared a Final Regulatory Flexibility Analysis which included the following: a description of the reasons for agency action; a statement of the objectives of, and the legal basis for, the final rule; a description of and, where feasible, an estimate of the number of small entities to which the final rule will apply; a description of the projected reporting, recordkeeping, and other compliance requirements of the final rule; an identification, to the extent practicable, of all relevant federal regulations that may duplicate, overlap, or conflict with the final rule; and alternatives considered to the final rule.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

ED does not discuss the Act in the final rule. In its submission to us, ED indicated that it did not prepare a written statement under section 202 of the Unfunded Mandates Reform Act of 1995.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that

directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

ED does not discuss the Act in the final rule.

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

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

On May 19, 2023, ED issued a proposed rule. 88 Fed. Reg. 32300. ED stated that it received comments from more than 7,500 individuals and entities in response to the proposed rule. ED responded to comments in the final rule.

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

ED stated that the final rule contains information collection requirements covered by the Act and that it has submitted, or will at the required time submit, a copy of the final rule to OMB for review. ED estimated the increased burden associated with this final rule to be as follows:

OMB Control Number 1845-0022 (225,900 hours and \$10,854,495);
OMB Control Number 1845-0173 (22,924 hours and \$529,322); and
OMB Control Number 1845-0174 (15,739 hours and \$370,441).

ED further stated that additional estimates of certain reporting costs will be cleared at a later date through a separate information collection.

Statutory authorization for the rule

ED stated that it promulgated this final rule pursuant to sections 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099b, 1099c, 1099c-1, 1221e-3, and 1231a of title 20, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

ED stated that it estimates the quantified annualized economic and net budget impacts of this final rule to be in excess of \$200 million. Therefore, ED stated that this final rule is subject to review by OMB under section 3(f) of the Order, as amended.

Executive Order No. 13132 (Federalism)

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