



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

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December 12, 2016

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable John Kline  
Chairman  
The Honorable Robert C. "Bobby" Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of Education: Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans*

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 "Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans" (RIN: 1810-AB27). We received the rule on November 7, 2016. It was published in the *Federal Register* as final regulations on November 29, 2016, with an effective date of January 30, 2017. 81 Fed. Reg. 86,076.

The final rule implements changes to the Elementary and Secondary Education Act of 1965 (ESEA) by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015. The final rule also updates the current ESEA general regulations to include requirements for the submission of state plans under ESEA programs, including optional consolidated state plans.

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: Amanda Amann  
Deputy Assistant General Counsel  
Division of 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  
“ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965,  
AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT—  
ACCOUNTABILITY AND STATE PLANS”  
(RIN: 1810-AB27)

(i) Cost-benefit analysis

The Department of Education (Education) summarized the costs and benefits of the final rule. Education determined that the costs of this final rule will include costs to establish a uniform procedure for setting long-term goals and measurements of interim progress for English learners that can be applied consistently and equitably to all students and schools for accountability purposes. Education estimates that at a cost of \$40 per hour for state staff, establishing the procedure will result in a one-time cost, across 50 states, the District of Columbia, and Puerto Rico, of \$166,400. Additionally, Education estimated the cost for developing a state-determined action or set of actions for schools that miss the 95 percent participation rate would incur a one-time cost of \$1,280 per state and \$33,280 in total (assuming \$40 per hour for state staff). However, Education stated that the majority of the changes in this final rule will not impose significant costs on states, local education agencies (LEAs), or other entities that participate in programs addressed by this final rule.

Education found that the benefits of this final rule include a more flexible, less complex and costly accountability framework for the implementation of the Elementary and Secondary Education Act of 1965 (ESEA) that respects state and local decision making; the efficient and effective collection and dissemination of a wide range of education-related data that will inform state and local decision making; and an optional, streamlined application process that will promote the comprehensive and coordinated use of federal, state, and local resources to improve education outcomes for all students and all subgroups of students.

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

Education determined that this final rule would 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

Education found that this final rule does not involve a federal mandate as defined in section 658 of the Unfunded Mandates Reform Act of 1995 because the duties imposed upon state, local, or tribal governments are a condition of those governments' receipt of federal formula grant funds under ESEA.

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

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

On May 31, 2016, Education published a proposed rule. 81 Fed. Reg. 34,539. Education received about 20,000 comments. Education responded to comments in the final rule.

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

Education determined that several sections of this final rule contain information collection requirements that will impact the burden and costs associated with two of its currently approved information collections, 1810-0581 and 1810-0576. Education submitted copies of the sections to the Office of Management and Budget for its review. Education also provided several tables in the final rule summarizing the costs of these information collections.

Statutory authorization for the rule

Education stated that it promulgated this rule under 20 U.S.C. §§ 6301-6376, 20 U.S.C. § 6571(a), 20 U.S.C. § 1221e-3, 20 U.S.C. § 3474, 42 U.S.C. § 12102, 20 U.S.C. § 7801(23), 20 U.S.C. § 7801(25), 20 U.S.C. § 7801(11), and 20 U.S.C. § 7842.

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

Education determined that this final rule is economically significant and subject to review by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

Education did not discuss the Order in the final rule.