

## **DEPARTMENT OF EDUCATION**

### **Statement of Regulatory Priorities**

#### I. Introduction

The U.S. Department of Education (Department) supports States, local communities, institutions of higher education, and families in improving education and other services nationwide to ensure that all Americans, including those with disabilities, receive a high-quality education and are prepared for high-quality employment. We provide leadership and financial assistance pertaining to education and related services at all levels to a wide range of stakeholders and individuals, including State educational and other agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, postsecondary students, members of the public, families, and many others. These efforts are helping to ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education or employment, and that students attending postsecondary institutions, or participating in other postsecondary education options, are prepared for a profession or career.

We also vigorously monitor and enforce the implementation of Federal civil rights laws in educational programs and activities that receive Federal financial assistance from the Department, and support innovative programs, research and evaluation activities, technical assistance, and the dissemination of data, research, and evaluation findings to improve the quality of education.

Overall, the laws, regulations, and programs that the Department administers will affect nearly every American during his or her life. Indeed, in the 2019-20 school year, about 56 million students attended an estimated 131,000 elementary and secondary schools in approximately 13,600 districts, and about 20 million students were enrolled in degree-granting postsecondary schools. Many of these students may benefit from some degree of financial assistance or support from the Department.

In developing and implementing regulations, guidance, technical assistance, evaluations, data gathering and reporting, and monitoring related to our programs, we are committed to working closely with affected persons and groups. Our core mission includes serving the most vulnerable, and facilitating equal access for all, to ensure all students receive a high-quality education, and complete it with a well-

considered and attainable path to a sustainable career. Toward these ends, we work with a broad range of interested parties and the general public, including families, students, and educators; State, local, and Tribal governments; other Federal agencies; and neighborhood groups, community-based early learning programs, elementary and secondary schools, postsecondary institutions, rehabilitation service providers, adult education providers, professional associations, advocacy organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we seek public participation at the key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the internet or by regular mail. We also continue to seek greater public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies.

To facilitate the public's involvement, we participate in the Federal Docket Management System (FDMS), an electronic single Government-wide access point ([www.regulations.gov](http://www.regulations.gov)) that enables the public to submit comments on different types of Federal regulatory documents and read and respond to comments submitted by other members of the public during the public comment period. This system provides the public with the opportunity to submit comments electronically on any notice of proposed rulemaking or interim final regulations open for comment, as well as read and print any supporting regulatory documents.

We are committed to reducing burden with regard to regulations, guidance, and information collections, reducing the burden on information providers involved in our programs, and making information easily accessible to the public. To that end and consistent with Executive Order 13777 ("Enforcing the Regulatory Reform Agenda"), we continue to review all of our regulations and guidance to modify and rescind items that: (1) eliminate jobs, or inhibit job creation; (2) are outdated, unnecessary, or ineffective; (3) impose costs that exceed benefits; (4) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (5) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the

standard for reproducibility; or (6) derive from or implement Executive orders or other Presidential directives that have been subsequently rescinded or substantially modified.

## **II. Regulatory and Deregulatory Priorities**

### *Proposed Rulemakings*

The following are the key regulatory and deregulatory rulemaking actions the Department is planning for the coming year. We provide below information about whether these rulemaking actions would be considered regulatory or deregulatory actions under Executive Order 13771. For rulemakings that we are just beginning now, we have limited information about their potential costs and benefits and cannot estimate at this time whether they would be considered regulatory or deregulatory actions.

### *Postsecondary Education/Federal Student Aid*

The Department is planning to propose a regulation requiring submission of true copies of original agreements memorializing statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with defined foreign sources by institutions, that institutions report to the Department under Section 117 of the Higher Education Act of 1965, as amended (HEA). The Department believes this proposed regulation is the most cost-effective and least burdensome approach to verifying the accuracy of the reports required by statute. Verification is necessary for the statutory purpose and necessitated by the ongoing failure of many institutions to comply with the statutory mandate that institutions accurately and fully report covered gifts and contracts from foreign sources. Departmental and other investigations have uncovered persistent and large-scale violations of law in the form of sometimes massive underreporting by institutions of statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with statutorily defined foreign sources.

### *Privacy*

The Department plans to propose amendments to the Family Educational Rights and Privacy (FERPA) regulations, to update, clarify, and improve the current regulations by addressing outstanding policy issues. The proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act (USA) of 2013 and the Healthy, Hunger-Free Kids Act of 2010, to reflect a change in the name of the office designated to administer FERPA, and to make changes related to the enforcement responsibilities of the office concerning FERPA.

### *Cross-Cutting*

In response to the United States Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017), the United States Attorney General's October 6, 2017 Memorandum on Federal Law Protections for Religious Liberty, and Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative), the Department proposed to provide clarity regarding the rights and obligations of faith-based organizations participating in the Department's programs. The Secretary is developing the final regulations for this rulemaking.

### *Deregulatory Actions*

The Department anticipates issuing a number of deregulatory actions in the upcoming fiscal year. For example, consistent with Executive Order 13777, the Department evaluated the Education Department General Administrative Regulations (EDGAR) for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations, and identified ways in which EDGAR could be updated, streamlined, and otherwise improved. Specifically, we plan to propose to amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations to implement a wide range of recommendations to streamline existing regulatory requirements. The unified agenda identifies other deregulatory actions that will provide cost savings and clarity.

Additionally, during the course of its work to comply with Executive Orders 13777 and 13891, the Department's Regulatory Reform Task Force (RRTF) has identified more than one thousand documents as being outdated (e.g., superseded by subsequent statutory amendments or enactments). We have rescinded these guidance documents in 2020 and are continually working to identify additional guidance documents that can be rescinded or modified.

In connection with the RRTF's work, the Department also has identified a number of information collections (ICRs) that are unnecessary or ineffective, and has modified or discontinued them.

### **III. Regulatory Review**

As stated previously, the Department is continuing its comprehensive regulatory reform efforts pursuant to Executive Order 13777, focusing on rescinding and modifying outdated, unnecessary, or ineffective regulations, guidance, and information collections. Section 3(e) of the Executive order

requires the Department, as part of this effort, to “seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations” on regulations that meet some or all of the criteria above. The Department will continue to consider public input and feedback as part of these efforts.

#### **IV. Principles for Regulating**

Over the next year, we may need to issue other regulations because of new legislation or programmatic changes. In doing so, we will follow the Principles for Regulating, which determine when and how we will regulate. Through consistent application of those principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider the following:

- Whether regulations are essential to promote quality and equality of opportunity in education.
- Whether a demonstrated problem cannot be resolved without regulation.
- Whether regulations are necessary to provide a legally binding interpretation to resolve ambiguity.
- Whether entities or situations subject to regulation are similar enough that a uniform approach through regulation would be meaningful and do more good than harm.
- Whether regulations are needed to protect the Federal interest, that is, to ensure that Federal funds are used for their intended purpose and to eliminate fraud, waste, and abuse.

In deciding how to regulate, we are mindful of the following principles:

- Regulate no more than necessary.
- Minimize burden to the extent possible, and promote multiple approaches to meeting statutory requirements if possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that the benefits justify the costs of regulating.
- To the extent possible, establish performance objectives rather than specify the behavior or manner of compliance a regulated entity must adopt.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to

achieve desired results.