

## **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 and who have been underserved, receive a high-quality and safe education and are prepared for employment that provides a livable wage. 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, students, members of the public, families, and many others. These efforts are helping to advance equity, recover from the COVID-19 pandemic, and ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education, and 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 and promising 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 2020-21 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 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 and safe 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, civil rights, nonprofits, 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.

## **II. Regulatory Priorities**

The following are the key rulemaking actions the Department is planning for the coming year. These rulemaking actions advance the Department's mission of "promot[ing] student achievement and preparation for global competitiveness by fostering educational excellence

and ensuring equal access.” These rulemaking actions also advance the President’s priorities of ensuring that every American has access to a high-quality education, regardless of background, and that government should affirmatively work to expand educational opportunities for underserved communities. During his first year in office, the President has repeatedly made clear the importance of advancing equity and opportunity for those who have historically been underserved, both as a general matter and with regard to the education system in particular. See Executive Order 13985 (On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); Executive Order 14021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity); Executive Order 14041 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Executive Order 14045 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics); Executive Order 14049 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities); and Executive Order 14050 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans). The rulemaking actions on the Department’s agenda seek to advance the President’s priorities, as set out in these executive orders and more broadly. The rules below cover a wide range of topics, and a wide range of educational institutions—from those serving our youngest children to colleges, universities, and adult education programs. In each of these contexts, promoting equity and opportunity for students who have been historically underserved is central to the Department’s regulatory plan.

These key rulemakings include Public Service Loan Forgiveness, Income Contingent Repayment, Improving Student Loan Cancellation Authorities, Pell Grants for Prison Education Programs, State-Defined Processes for Ability to Benefit, and Civil Rights, such as Title IX Nondiscrimination on the Basis of Sex in Education Program or Activities Receiving Federal Financial Assistance. For example, the Pell Grants for Prison Education Programs rule would support increased educational opportunities for individuals who are incarcerated and provide

quality options for individuals in this underserved community. Additionally, the Income Contingent Repayment rule would make student loan payments more affordable for borrowers, with a particular goal of helping increase educational opportunities for many low-income borrowers. The Department has also dispersed billions of dollars in funding during the COVID-19 pandemic to address inequities exacerbated by the pandemic, which targets resources to historically underserved groups of students and those students most impacted by the pandemic through the American Rescue Plan and other relief efforts.

For rulemakings that we are just beginning now, we have limited information about their potential costs and benefits. We note that some policies that were previously included in the Spring Unified Agenda, such as policies impacting the magnet schools and charter school programs, are still part of the Department's plans but do not require regulation and, therefore, are not included as items in the Fall regulatory agenda or in this regulatory plan. We have also identified the Innovative Assessment Demonstration Authority (IADA) rulemaking as a long-term action because we are waiting for the forthcoming progress report on the initial demonstration authority to inform any potential regulatory proposal.

#### *Postsecondary Education/Federal Student Aid*

The Department's upcoming higher education regulatory efforts include the following areas:

- Public Service Loan Forgiveness
- Borrower Defense to Repayment
- Improving Student Loan Cancellation Authorities
- Income Contingent Repayment
- Pell Grants for Prison Education Programs
- Gainful Employment
- 90/10 rule

These areas are focused on several general areas which include improving the rules governing student loan repayment and targeted student loan cancellation authorities and protecting students

and taxpayers from poor-performing programs, among other topics. These rulemakings reflect the Department's commitment to serving students and borrowers well and protecting them from harmful programs and practices that may derail their postsecondary and career goals. Through these regulatory efforts, the Department plans to address gaps in postsecondary outcomes, particularly those related to student loan repayment, affordability, and default. The Department is also focused on the disparate impacts by income, race/ethnicity, gender, disability status, and other demographic characteristics that may affect students' postsecondary and career goals. For its higher education rulemakings, generally the Department uses a negotiated rulemaking process. We have selected participants for the negotiated rulemaking committees from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we selected nominees who reflect the diversity among program participants.

Specifically, the Department is currently conducting negotiated rulemaking addressing, among other things, student loan repayment and targeted student loan discharges by improving Public Service Loan Forgiveness, Borrower Defense to Repayment, and other targeted student loan cancellation authorities. On Income Contingent Repayment, the Department plans to create or adjust an income-contingent repayment plan that would allow borrowers to more easily afford their student loan payments. For Public Service Loan Forgiveness, the Department plans to streamline the process for receiving loan forgiveness after 10 years of qualifying payments on qualifying loans while engaging in public service. For Borrower Defense, the Secretary plans to amend the regulations that specify the acts or omissions of an institution of higher education that a borrower may assert as a defense to repayment of a loan made under the Federal Direct Loan Program. In Improving Student Loan Cancellation Authorities, the Department plans to propose improvements in areas where Congress has provided borrowers with relief or benefits related to Federal student loans. This includes authorities granted under the Higher Education Act (HEA) that allow the Department to cancel loans for borrowers who meet certain criteria, such as having a total and permanent disability, attending a school that closed, or having been falsely certified for a student loan. For these borrowers, the Secretary plans to amend the regulations relating to

borrower eligibility and streamline application requirements and the application and certification processes. To increase access to educational opportunities, the Department also plans to propose regulations that would guide correctional facilities and eligible institutions of higher education that seek to establish eligibility for the Pell Grant program for individuals who are incarcerated.

The Department also plans to conduct negotiated rulemaking on Gainful Employment and how to determine the amount of Federal educational assistance received by institutions of higher education through implementation of the 90/10 rule. For Gainful Employment, the Department plans to propose regulations on program eligibility under the HEA, including regulations that determine whether postsecondary educational programs prepare students for gainful employment in recognized occupations, and the conditions under which programs remain eligible for student financial assistance programs under title IV of the HEA. On the 90/10 rule, in response to changes to the HEA made by the American Rescue Plan Act of 2021, the Department plans to amend provisions governing whether proprietary institutions meet requirements that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

#### *Civil Rights/Title IX*

The Secretary is planning a new rulemaking to amend its regulations implementing Title IX of the Education Amendments of 1972, as amended, consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity.

#### *Student Privacy*

The Department is considering policy options to amend the Family Educational Rights and Privacy Act (FERPA) regulations, to update, clarify, and improve the current regulations. The

proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act 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.

### *COVID- 19 Regulations*

As part of the Biden-Harris Administration's efforts to combat COVID-19, safely reopen and support schools, and implement the American Rescue Plan Act (ARP), the Department has issued: interim final requirements to promote accountability, transparency, and the effective use of ARP Elementary and Secondary School Emergency Relief Funds; a request for information regarding implementation of the statutory requirements for ARP's maintenance of equity (a first-of-its-kind requirement to protect schools and districts serving students from low-income backgrounds from harmful budget cuts); final requirements to clarify the requirements applicable to the ARP Emergency Assistance to Non-Public Schools program; amended regulations so that an institution of higher education (IHE) may appropriately determine which individuals currently or previously enrolled at an institution are eligible to receive emergency financial aid grants to students under the Higher Education Emergency Relief programs; and a final rule regarding the allocations to Historically Black Colleges and Universities (HBCUs) awarded under section 314(a)(2) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA).

### **III. 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.