

## **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.

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 organizations, nonprofits, advocacy organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we can 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. For example, on June 7-11, 2021, we sought public input through a virtual public hearing on Title IX of the Education Amendments of 1972. We hosted this hearing to provide a forum for all of our stakeholders and other members of the public, including those from underserved communities, to share their experiences, insights, and expertise on Title IX. The information shared during this helped us determine changes to propose to the regulations regarding Title IX. Additionally, on January 11, 2023, we published a Request for Information (RFI) on Regarding Public Transparency for Low-Financial-Value Postsecondary Programs. For this RFI, we solicited public comments from stakeholders and members of the public, including those from underserved communities, on how to identify the best ways to calculate the metrics that may be used to identify low-financial-value programs and inform technical considerations. We also note that the Higher Education Act of 1965 requires the Department to use the negotiated rulemaking process for a majority of its higher education rulemakings, which is a process that necessitates public participation from a broad range of stakeholders. Additionally, at the end of each day during the negotiated rulemaking sessions, the Department provides an opportunity for members of the public who are not at the negotiating table to speak and provide input. The Department has exclusively used virtual negotiated rulemaking sessions for these higher education regulations since 2021. Hosting virtual meetings instead of in-person sessions has significantly expanded the ability to draw in robust public comment from across the country, as the time commitment is more manageable and does not require traveling in order to participate.

The Department has also taken steps to seek public input on the development of guidance documents. On February 15, 2023, we announced that we would conduct a review of existing guidance related to a statutory provision about how institutions of higher education may compensate recruiters. To engage public participation we held a virtual public hearing on this topic on March 8 and 9, 2023. This

gave dozens of members of the public a chance to express their opinions before the Department took any formal steps through guidance. We also sought public comment on this topic, which yielded nearly 270 comments. This approach allowed the Department to get thoughts from the public at the pre-drafting stage and will assist in gauging what changes, if any, to make to this guidance.

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 time 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. Our regulatory agenda covers 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.

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

The Department plans to propose regulations to provide debt relief to student loan borrowers. Specifically, the Department is working on regulations to better clarify the use of the Secretary's authority to waive some or all of a borrower's outstanding balance on a Federal student loan, pursuant to Section 432(a)(6) of the Higher Education Act of 1965, as amended. Negotiation sessions are taking place during the fall of 2023, with draft and final rules expected next year.

#### *Civil Rights/Title IX*

The Secretary proposed 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.

### *Grants*

The Department plans to propose revisions to the Education Department General Administrative Regulations (EDGAR) to make a variety of updates and revisions, including to update and clarify evidence-related components, to clarify how the Department makes determinations related to continuation awards under competitive grant programs, and to expand flexibility for grantees by clarifying that, where not prohibited by law or the terms and conditions of the grant award, subgranting authority rests with States. These proposed changes would ensure that the EDGAR regulations are consistent with current law and would reduce or eliminate unnecessary burdens and restrictions.

### *Recently Completed Rulemakings*

Additionally, the Department has recently concluded its Improving Income Driven Repayment and Gainful Employment rulemakings. For Improving Income Driven Repayment, the Department issued final regulations governing income-contingent repayment plans by amending the Revised Pay as You Earn repayment plan and restructuring and renaming the repayment plan regulations under the William D. Ford Federal Direct Loan Program, including combining the Income Contingent Repayment and the Income-Based Repayment plans under the umbrella term of "Income-Driven Repayment" plans, and providing conforming edits to the FFEL Program. For Gainful Employment, the Department published final 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. The Department also published final regulations on Financial Responsibility, Administrative Capability, Certification, and Ability to Benefit.

### **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.