

## **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 and Raise the Bar for all students by achieving academic excellence, improving learning conditions, creating pathways for global engagement, and increasing college affordability and completion.

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.

#### **II. Public Participation**

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, during the early stages of the Family Educational Rights and Privacy Act (FERPA) rulemaking, the Department facilitated three student privacy virtual listening sessions with K-12 organizations, postsecondary organizations, and advocacy organizations in February 2022. The input we received during these listening sessions highlighted concerns that we plan to address in the proposed rule. Additionally, the Department has held numerous listening sessions with individuals with disabilities, educators, and other professionals and recipients on various issues related to the Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance from the Department of Education, as part of the development of the proposed rule. For the Amendments to Definitions Under the Randolph-Sheppard Vending Facility Program and Related Provisions of That Program and to the State Vocational Rehabilitation Services Program rulemaking, the Department proactively sought input on the Randolph-Sheppard program broadly during a February 6, 2024, listening session with organizations representing blind merchants, State agencies, and blind vendors. The Department will use the feedback it received to inform its proposed amendments.

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. Under negotiated rulemaking, the Department seeks and considers initial input through public hearings and written comments when it announces intent to establish a negotiated rulemaking committee and requests nominations from the public for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee before a committee is established. 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. For more information on our negotiated rulemaking and opportunities for public engagement, please go to <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/negotiated-rulemaking-for-higher-education-2023-2024>.

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.

### **III. 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 intends to amend regulations related to the authorities granted to the Secretary under 20 U.S.C. 1082(a) of the Higher Education Act of 1965, as amended (HEA), to provide relief to Federal student loan borrowers who have experienced or are experiencing hardship. Additionally, the Department plans to amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), to promote program integrity and institutional quality. These regulations would clarify, update, and consolidate certain provisions that apply to distance education; the return of title IV, HEA funds; and the Federal TRIO programs. Additional regulations would address accreditation and state authorization and seek to ensure that the program integrity triad is appropriately holding institutions accountable for providing high-quality educational opportunities and would create more consumer-friendly policies to ensure students have access to aid in which they are entitled to cover college costs through cash management provisions. Finally, the Department plans to amend regulations on third-party servicers under the HEA, related to existing guidance on third-party servicers, reporting requirements, financial or other compliance requirements, and past performance requirements as a component of ongoing institutional eligibility for participation in Federal student financial aid.

### *Civil Rights*

The Department plans to propose to amend its regulations implementing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, consistent with the priorities of the Biden-Harris Administration. These priorities include: advancing equity for persons with disabilities as required by Executive Order 13985, addressing persistent barriers to access for students with disabilities in education, aligning the current regulations with intervening laws protecting the rights of people with disabilities, including the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendments Act of 2008, and updating outdated language.

### *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.

### **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.
- Provide meaningful and equitable opportunities for public input by a range of interested or affected parties, including underserved communities.