

**REGULATORY REFORM TASK FORCE  
STATUS REPORT**



**December 2018**



## UNITED STATES DEPARTMENT OF EDUCATION

### **MEMORANDUM TO THE SECRETARY**

From: Regulatory Reform Task Force

Date: December 21, 2018

Re: Regulatory Reform Task Force Status Report

This memorandum provides a status report pursuant to the President's Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (the "Order"), to reduce regulatory burdens on the American people through regulatory reform. We set forth below the Department of Education's ("Department") work through the date of this report.

### **REQUIREMENTS OF THE ORDER**

You will recall that the Order directs the establishment of a Regulatory Reform Task Force (the "RRTF") to oversee the implementation of the Department's regulatory reform initiatives. Reporting periodically to the Secretary and regularly consulting with agency leadership, the RRTF must evaluate existing regulations and guidance and make recommendations to the Secretary regarding any repeal, replacement, or modification.

The Order requires the RRTF to identify regulations that (i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 or its guidance; or (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

The Order also directs the RRTF to seek input and other assistance from entities "significantly affected" by the agency's regulations. When implementing the regulatory offsets required by Executive Order 13771 (the "two-for-one order"), the Order also requires the Secretary to give priority to those regulations that the RRTF has identified as being outdated, unnecessary, or ineffective.

### **COMPLIANCE WITH THE ORDER**

Since October 2017, the Department has taken the following steps to comply with the Order.

1. *Regulatory Reform Task Force Meetings*

Composed of career and non-career employees, the RRTF met periodically throughout the year, engaged in stakeholder outreach, evaluated public comments, and focused its review on stale, outdated, unnecessary, or ineffective regulations and guidance.

## 2. *Stakeholder Outreach by the Department and its Principal Offices*

To comply with the Order's requirement in section 3(e) to seek input from the public, the Department continued to seek comments directly from the general public, with several Principal Offices also reaching out to their stakeholders.

### a. *Outreach by the Department*

With reference to the general Department-wide outreach effort, the RRTF published a request for comments in the *Federal Register* on June 22, 2017, inviting the public to provide comments on identifying regulations and guidance for repeal, replacement, or modification. After extending the closing date from August 21 to September 20, 2017, the Department received over 16,000 comments from the public. The RRTF and each POC completed their review of these comments by June 2018.

### b. *Outreach by Principal Offices*

In addition to the Department-wide *Federal Register* notice seeking public comment, several Principal Offices have asked for the views of the stakeholders especially relevant to their offices in a variety of ways. The method depended on the Principal Office.

To obtain the views of the postsecondary education community, the **Office of Postsecondary Education (OPE)** conducted hearings at Salt Lake Community College in Sandy, Utah and at the Department on September 26, 2017 and October 4, 2017, respectively. For any specific regulation relating to the student financial aid programs or other programs authorized under Title IV of the HEA that OPE identifies for repeal, replacement, or modification, the HEA requires the Department to engage the public through public hearings and negotiated rulemaking committees (just as it is doing for its current negotiated rulemaking efforts). The Department also held listening sessions at its annual Federal Student Aid conference on regulatory reform and other topics in November of 2017. In addition, OPE held three public hearings with regard to establishing a negotiated rulemaking committee on accreditation and other issues. Those hearings were held in September 2018 at the Department in Washington, DC; in New Orleans, Louisiana, and in Sturtevant, Wisconsin.

Assistant Secretary for Career, Technical, and Adult Education Scott Stump and the Division of Academic and Technical Education within the **Office of Career, Technical, and Adult Education (OCTAE)** attended four regional state CTE director meetings, which were hosted by Advance CTE, the Association for Career and Technical Education (ACTE), the American Association of Community Colleges (AACC), and the National Alliance for Partnerships in Equity (NAPE). These meetings took place throughout Fall 2018 in Atlanta, Georgia; Phoenix, Arizona; Minneapolis, Minnesota; and Baltimore, Maryland. During these meetings, the Department solicited feedback on the plan to rescind non-regulatory guidance regarding the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) when the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) takes effect on July 1,

2019. There was general agreement, amongst both the state directors and the stakeholders with whom they must consult, with the Department's plans to remove outdated guidance to encourage innovation.

For its stakeholder outreach, the leadership of the **Office of Elementary and Secondary Education (OESE)** convened a listening session with the Secretary on October 2, 2017, for education policy thought leaders, who individually presented their views on the topic of regulatory relief for State educational agencies, local school districts, schools, teachers, and administrators. This feedback covered many of OESE's program offices, with a number of comments addressing OESE's State Assessment regulations, as well as expressing support for the existing McKinney-Vento and Impact Aid programs.

The **Office of Special Education and Rehabilitative Services (OSERS)** continues to receive input from the public, including at on-site meetings, teleconferences, letters, and at conferences. Input on the Department's regulations and guidance has been received from organizations representing parents, disability advocates, civil rights groups, and education associations, as well as individuals representing themselves. State Directors of Special Education, State Part C Coordinators for Early Intervention, and members of the Council of State Administrators for Vocational Rehabilitation use quarterly calls with OSERS as an opportunity to continue to provide input on the Part B and C regulations implementing the Individuals with Disabilities Education Act, as well as the Vocational Rehabilitation regulations implementing the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act.

**OCR** has carefully listened to numerous stakeholders, such as teachers, students, parents, representatives of national groups, advocates, and others, on a number of topics, particularly in the areas of sexual harassment under Title IX and discrimination in student disciplinary practices under Title VI. With respect to Title IX, OCR engaged a host of groups in anticipation of issuing its Notice of Proposed Rulemaking on November 29, 2018. With respect to Title VI, OCR also held stakeholder outreach sessions that culminated in a joint summit with the Department of Education and Department of Justice on April 4, 2018.

### *3. Regulatory Review*

#### *a. Regulations*

**OPE** initially identified two sets of regulations (Borrower Defense to Repayment/Financial Responsibility and Gainful Employment) for review through negotiated rulemaking under the Higher Education Act of 1965, as amended (HEA). OPE convened negotiated rulemaking committees and subcommittees in late 2017 and early 2018. Throughout the spring and summer, the Department worked with the White House and other agencies to craft and issue NPRMs. The Department received approximately 38,000 public comments on the Borrower Defense to Repayment/Financial Responsibility NPRM and about 14,000 comments on the Gainful Employment NPRM. The Department is continuing to work on these rules and to publish final rules for Gainful Employment and Borrower Defense to Repayment/Financial Responsibility.

In 2018, the Department identified additional postsecondary regulations for review. These include accreditation, postsecondary innovation topics (such as competency-based education, distance learning, and State authorization requirements for distance education programs), religious freedom issues concerning faith-based institutions, and modifications to the TEACH Grant program. The Department held three hearings to obtain public comment: September 6, in Washington, D.C.; September 11, in New Orleans, Louisiana; and September 13, in Sturtevant, Wisconsin. Negotiated rulemaking will commence with three committee sessions in 2019, all in Washington, D.C.: January 14-16; February 19-22; and March 25-28. The Department will then publish proposed rules, receive public comments, and publish final regulations.

In addition, on July 3, 2018, the Department published a final rule (developed by OPE) delaying until July 1, 2020, the effective date of selected provisions of the State Authorization of Distance Education regulations issued by the Department in 2016. We estimated that this delay regulation will result in cost savings of \$5.6 million for regulated parties.

On August 22, 2018, the Department also published a final rule (developed by **OESE**) withdrawing the regulations governing the Migrant Even Start Family Literacy Program; the Christa McAuliffe Fellowship Program; and the priority for Empowerment Zone or Enterprise Community, as Congress has not authorized or extended these programs. The final rule also removed other regulations that have been superseded by the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). On July 17, 2018, the Department published the withdrawal of the NPRM on the supplement not supplant requirement under title I, part A of the ESEA, as amended by ESSA, following OESE's identification of that NPRM for withdrawal.

On January 12, 2018, the Department published a final rule removing superseded regulations for five programs that **OSERS** identified for removal because they are no longer administered by the Department: The Disability and Rehabilitation Research Projects and Centers Program, the Research Fellowships program, the Special Projects and Demonstrations for Spinal Cord Injuries program, the State Independent Living Services program, and the Centers for Independent Living program. In 2014, the Workforce Innovation and Opportunity Act transferred these programs to the Department of Health and Human Services, which has adopted regulations for them. Further, on July 3, 2018, the Department published a final rule (developed by OSERS) postponing by two years the date for States to comply with the Significant Disproportionality regulations from July 1, 2018, to July 1, 2020. The delay regulation also postponed the date for including children ages three through five in the analysis of significant disproportionality, with respect to the identification of children as children with disabilities and as children with a particular impairment, from July 1, 2020, to July 1, 2022. The Department estimates a cost savings of \$7.5 million for the postponement of the Significant Disproportionality regulations compliance dates.

On March 5, 2018, the Department published a final rule (developed by **OII**) rescinding its Troops-to-Teachers regulations because that program has been transferred to the Department of Defense and is no longer administered or managed by the Department.

On September 21, 2018, the Department published a final rule (developed by **OCTAE**) to remove outdated, superseded regulations for seven programs in the State Vocational and Applied

Technology Education Programs and National Discretionary Programs of Vocational Education. These programs are no longer funded by the Department.

As POCs continue to review their regulations, the Department will note additional deregulatory actions in its next Unified Agenda of Federal Regulatory & Deregulatory Actions that OMB will publish in the spring of 2019.

*b. Regulatory Workgroup*

A workgroup continues to evaluate the Department's Education Department General Administrative Regulations (EDGAR workgroup). Building on the work from last year, this cross-POC workgroup is now drafting updates to those rules to streamline the Department's grantmaking processes and remove unnecessary burden. The Department plans to incorporate those updates into an NPRM for publication in 2019.

*c. Unified Agenda*

OMB published the Department's Unified Agenda of Deregulatory and Regulatory Actions and its Regulatory Plan on October 17, 2018. The Agenda and Plan provide detailed information about the Department's deregulatory and regulatory actions for the next 12 months. Published twice a year, the Agenda ensures that OMB and the public have accurate, thoughtful, and timely information about our regulatory process and priorities. The public can obtain the Department's Plan and Agenda at the following site: <https://www.reginfo.gov/public/do/eAgendaMain>

*d. Policy Guidance*

The RRTF has spent a significant amount of time reviewing policy-oriented guidance documents, including Dear Colleague Letters, Questions and Answers or Frequently Asked Questions, policy memos, and the like. The following POCs intend to archive or withdraw such guidance:

**OPE** initially identified 1,171 guidance documents, but has since identified several hundred more, for a total of 1,562 guidance documents. Of those, OPE has identified 1,230 guidance documents (2,698 pages) that are out-of-date and that it intends to withdraw. This represents a reduction of nearly 80%.

**OCTAE** identified and withdrew, out of 25 documents, nine out-of-date guidance documents. From 228 guidance documents, **OESE** identified and withdrew 97 stale and unnecessary guidance documents. **OII** identified and withdrew two stale guidance documents for rescission. Out of 169 documents, **OSERS** identified and withdrew 72 stale guidance documents.

The **Office of the Chief Financial Officer** identified and withdrew five out-of-date guidance documents.

On July 3, 2018, **OCR** rescinded six guidance letters addressing the use of race by educational institutions. On December 21, 2018, OCR also rescinded certain six guidance documents relating to the administration of school discipline.

#### 4. *Cross-program office regulatory burden-reduction initiatives*

##### a. *Guidance Workgroup*

In December 2017, the U.S. House of Representatives, Committee on Oversight and Government Reform, requested detailed information from Federal agencies, including the Department, regarding their non-regulatory guidance issued since 2008. In March 2018, the Committee released its report, “[Shining Light on Regulatory Dark Matter](#),” and identified the Department’s submission as one of the “bright spots” among the other agency submissions. The Committee noted that the Department was one of two agencies that had the capability to respond properly, indicating effective and implemented information management policies. In response to a recommendation from the Committee, the guidance working group is creating a web portal with a brief explanation and links to each principal operating component’s guidance. The workgroup is currently reviewing a beta version of this website that the Department will finalize by in early 2019. The beta version of this website can be accessed at the following link: <https://preview.ed.gov/policy/gen/guid/types-of-guidance-documents.html>

##### b. *Information Collections Workgroup*

This group identified 21 information collection requests to discontinue and two to modify. These changes will result in a savings of \$11.6 million for the Department.

#### **NEXT STEPS: CONTINUED IMPLEMENTATION OF THE ORDER**

As next steps, the RRTF will continue to study the feedback received through outreach efforts and recommend whether additional regulations and related substantive policy guidance meet the Order’s criteria for repeal, replacement, or modification. The Department will also continue its internal deliberation of whether our regulations and guidance should be modified or rescinded based on policy grounds.