

**REGULATORY REFORM TASK FORCE  
STATUS REPORT**



**December 2019**



## UNITED STATES DEPARTMENT OF EDUCATION

### MEMORANDUM TO THE SECRETARY

From: Regulatory Reform Task Force  
Date: January 7, 2020  
Re: Regulatory Review Status Report for 2019

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") regulatory review work through December 31, 2019.

### REQUIREMENTS OF THE ORDER

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The Order requires the RRTF to identify regulations that (i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives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or (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.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the Order also requires the Secretary to give priority to those regulations that the RRTF has identified as being outdated, unnecessary, or ineffective.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 December 2018, the Department has taken the following steps to comply with the Order.

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

## **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, reviewed stale, outdated, unnecessary, or ineffective regulations and guidance, and continued the work set forth in the Executive Order.

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

Consistent with the Order's requirement in section 3(e) to seek input from the public, the Department continued to seek such input, including through negotiated and notice and comment rulemaking. We discuss specific requests for input in this report.

## **3. Regulations**

As required by the Higher Education Act, the Department conducted negotiated rulemaking with three committee sessions in 2019 on topics that included accreditation and State authorization requirements for distance education programs, competency-based education and distance learning, religious freedom issues concerning faith-based institutions, and modifications to the TEACH Grant program. We conducted each of these sessions in Washington, D.C.: January 14-16; February 19-22; and March 25-28. After intense negotiation on these significant, complex issues, the negotiators reached a historic consensus, and the Department proceeded with rulemaking for three regulatory packages (Accreditation and State Authorization, TEACH and Title IV Religious Freedom Issues, and Distance Learning and Innovation). Subsequently, we:

- Promulgated a final rule on Accreditation and State Authorization on November 1, 2019, which will be effective July 1, 2020;
- Published a notice of proposed rulemaking (NPRM) for TEACH and Title IV Religious Freedom Issues on December 11, 2019; and
- Submitted the Distance and Innovation NPRM to OMB.

The Department also continued its regulatory review work in other areas. On July 1, 2019, we published final regulations rescinding the Gainful Employment regulations. The rescission will be effective on July 1, 2020. The rule eliminates significant paperwork burden and administrative costs for applicable entities, and it is estimated to yield \$160 million in annualized cost savings (analyzed at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon).

On September 23, 2019, the Department published its Institutional Accountability-Borrower Defense to Repayment final regulations in the Federal Register. These final regulations revise the Federal standard and process for adjudicating borrower defenses to repayment claims for Federal student loans first disbursed on or after July 1, 2020, and provide to collect from schools the amount of financial loss due to successful borrower defense to repayment loan discharges. In addition to updating certain institutional Financial Responsibility requirements, the rule addresses Closed School Discharges and False

Certification Discharges available to students. This final regulation is estimated to save taxpayers in excess of \$11 billion dollars over ten years.

In July 2019, the Department submitted an NPRM on Non-Title IV Religious Freedom Issues to OMB for review; it is pending with the Federal Register, and we expect publication in January 2020.

In November 2019, after examining over 124,000 public comments submitted in response to its NPRM published on November 29, 2018, the Department submitted to OMB final regulations to amend regulations implementing Title IX of the Education Amendments of 1972 addressing sexual harassment.

With regard to the Department's focus on stale, outdated, unnecessary, or ineffective regulations and guidance:

- In June 2019, we published *Outdated Regulations--Expanding Opportunity Through Quality Charter Schools Program (CSP)-- Grants for Credit Enhancement for Charter School Facilities* to reflect changes made to title IV of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).
- In July 2019, we issued *Title I--Improving the Academic Achievement of the Disadvantaged; Technical Amendments* to implement changes to the ESEA made by ESSA.
- Other published regulations correcting outdated regulations include *Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)* and *Program Regulations Superseded by Reauthorizations of the Perkins Act*.

**The Department's deregulatory actions (including paperwork) over FY 2019 resulted in an incremental cost savings of -\$190.4M (annual) and -\$3.56B (present value) (adjusted for inflation).**

As principal operating components (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 2020.

#### 4. Policy Guidance

The RRTF has also continued to spend 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. Previously, we focused on rescinding outdated, unnecessary, and ineffective guidance. Having cleared out a vast number of these documents, we turned to updating guidance to ensure stakeholders have current (not outdated) information about statutory and regulatory provisions. For example, we issued:

- In June 2019, final non-regulatory guidance to support school districts in complying with the requirement that Federal funds supplement, and not supplant, state and local funds, consistent with Section 1118 of Title I, Part A of the ESEA, as amended by ESSA. The Department issued this nonbinding technical assistance only after receiving public comments on the guidance.
- In September 2019, *Opportunities and Responsibilities for State and Local Report Cards and Local Report Cards Under the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act*. This nonbinding technical assistance document will assist SEAs and LEAs in implementing the “report card” requirements under Title I, Part A (Title I) of the ESEA. Prior to finalizing, the Department provided for a thirty-day period to obtain comments from the public.
- In October 2019, *Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families – Updated Non-Regulatory Guidance*. Finalized only after review of public comments, this nonbinding guidance provides information on section 1117 of the ESEA, which requires participating LEAs, in consultation with appropriate private school officials, to provide eligible children attending private non-profit elementary and secondary schools, their teachers, and their families with Title I services or other benefits that are equitable to those provided to eligible public school children, their teachers, and their families.

## 5. Information Collections

The Department modified or discontinued 10 information collection requests, which resulted in approximately \$3.6M in cost savings.

## 6. Unified Agenda

OMB released the Department’s Unified Agenda of Deregulatory and Regulatory Actions and its Regulatory Plan on November 20, 2019. 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: [www.reginfo.gov/public/do/eAgendaMain](http://www.reginfo.gov/public/do/eAgendaMain)

## 7. Collaborative Projects

During 2019, the Department launched or continued several collaborative projects to further the goals of the RRTF:

- For example, the Department initiated its efforts to implement the requirements of Executive Order 13891, *Promoting the Rule of Law Through Improved Agency Guidance Documents*, and will continue these efforts over the coming year.

- Additionally, 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 Department created a guidance web portal with a brief explanation and links to each principal operating component's guidance. We are currently working to update the guidance web portal to adhere with Executive Order 13891, but the RRTF's work over the last years has placed the Department in the forefront of federal agencies regarding the public's ease of access to Department guidance documents.
- As another example, a cross-office workgroup on grants procedures, which originated from a recommendation of the RRTF, continues its work to update the *Education Department's Grant Administrative Regulations*. The aim is for these new regulations to be in effect during FY 2020.

#### **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.