

WASHINGTON UPDATE

MARCH 2017

Trump Orders Federal Agencies to Identify Regulations for Elimination

On February 24, 2017, President Donald Trump ordered federal agencies to begin identifying regulations for elimination. Within 60 days of the date of the order, federal agency heads, except those with waivers, are required to select an agency official as its Regulatory Reform Officer (RRO) to oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms. Each agency is required to establish a Regulatory Reform Task Force to identify regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, impose costs that exceed benefits; or create inconsistencies or conflicts with regulatory reform initiatives and to make recommendations to the agency head regarding repeal, replacement, or modification of rules.

A copy of the Executive Order is found at: <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

Senate Confirms DeVos as Secretary of Education

On February 7, 2017, the Senate approved Betsy DeVos as the next Secretary of Education. Vice President Pence cast the tie-breaking vote in her favor. Mrs. DeVos' confirmation hearing was said to be "underwhelming" because of her apparent lack of preparation and knowledge about the Department's programs, specifically her lack of familiarity with public education. Her nomination was strongly opposed by Democrats and two Republican Senators, Lisa Murkowski (R-AL) and Susan Collins (R-ME).

Mrs. DeVos was not only opposed by teachers' unions, but grass-roots local parents' and teachers' organizations because she has fought for the expansion of the charter school sector but also for school vouchers, which allow students to use taxpayer dollars to private schools, for-profit schools, religious schools and online schools.

Ranking Member of the Health, Education, Labor and Pensions (HELP) Committee Patty Murray (D-WA) said:

"For people across the country...the nomination of Betsey DeVos truly hit close to home. It was a slap in the face. Because she doesn't approach this the way most of us do. She doesn't cherish public education – she doesn't value it. She is someone who has dedicated her career and her inherited fortune to privatizing public schools. To tearing down public education. To defunding it – in order to push more taxpayer dollars into private schools and for-profit charters."

Chairman of the HELP Committee Lamar Alexander (R-TN) spoke on the Senate floor before the vote:

"I'm supporting her...because she's led the most effective public school reform over the last 30 years and of her commitment to help low-income children. You may disagree with the new president, but the people elected him. And I urge you to give the new Republican president the opportunity to choose his own education secretary, just like we did the Democratic president eight years ago and one year ago, even

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though we disagreed just as much with their view of federal policy on local schools as you do with her policy and President Trump's policy on school choice.”

Trump Asks Falwell to Head Task Force on Higher Education Regulations

On January 31, 2017, President Donald Trump appointed President of Liberty University, Jerry Falwell, Jr., to lead a presidential task force on reducing college regulations. Mr. Falwell said he sees this as a response to “overreaching” regulations and micro-management in areas of accreditation and policies that affect student recruiting.

On February 23, 2017, a number of Senate Democrats sent a letter to Secretary of Education Betsy DeVos asking her for details on the education task force. The Senate Democrats that include Ranking Member of the Senate Health, Education, Labor and Pensions Committee Patty Murray (D-WA), Senator Elizabeth Warren (D-MA), Senator Dick Durbin (D-IL), Senator Sheldon Whitehouse (D-RI), Senator Tammy Baldwin (D-WI), and Senator Maggie Hassan (D-NH) asked for responses to their questions by March 9, 2017. The letter says: “As your agency will be the primary convener of the ‘task force,’ we ask that you provide clarity about how it will operate and how the Department intends to ensure fairness and transparency at every state of the task force’s work.”

A copy of the letter is found at: <https://www.scribd.com/document/340105153/Falwell-Task-Force-Letter-2-23-17>.
https://www.warren.senate.gov/files/documents/2017-3-7_Ltr_to_Alexander_re_HELP_nominees.pdf

Enzi Asks Secretary DeVos to Conduct a Comprehensive Audit of all Student Loan-Related Data

On February 28, 2017, Senate Budget Committee Chairman Mike Enzi (R-WY) released a letter he sent to Secretary of Education Betsy DeVos on February 23, 2017, asking her to conduct audits of all student loan-related data. Senator Enzi cited inaccurate data about the projected cost of income-driven repayment plans that was found in a fall 2016 Government Accountability Office (GAO) study and student loan repayment rates included in the College Scorecard and in the Financial Aid Shopping Sheet that was disclosed in an Electronic Announcement of January 13, 2017. Senator Enzi said: “It’s important to realize that if the Education Department were a bank, it would be among the largest in the nation, based on its \$1.3 trillion student loan portfolio.”

A copy of the Senator’s letter is found at:
<http://www.budget.senate.gov/imo/media/doc/Letter%20to%20Secretary%20DeVos.pdf>.

Senate HELP Committee Democrats Request Hearings on ED Appointees

On March 7, 2017, Senators Elizabeth Warren (D-MA), Bernie Sanders (D-VT), Bob Casey (D-PA), Tammy Baldwin (D-WI), Al Franken (D-MN), Maggie Hassan (D-NH), and Chris Murphy (D-CT) sent a letter to Chairman of the Health, Education, Labor and Pensions Committee Lamar Alexander (R-TN) requesting that the HELP Committee hold hearings for those Department of Education appointees needing confirmation including Deputy Secretary, Under Secretary, General Counsel, and Assistant Secretaries with authorities over policy, civil rights and postsecondary education. “We have an obligation to question the

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individuals with whom Secretary DeVos will work in the Department and whom she admittedly expects to rely upon to protect the integrity of our higher education system.”

A copy of the Senate Democrat’s letter is found at:

https://www.warren.senate.gov/files/documents/2017-3-7_Ltr_to_Alexander_re_HELP_nominees.pdf.

Murray and Scott Request Answers on Program Cuts

On February 24, 2017, Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Patty Murray (D-WA) and House Education and the Workforce Committee Ranking Member Bobby Scott (D-VA) asked Secretary of Education Betsy DeVos to explain comments she made on a Michigan radio program a few weeks before when she said she would review, audit, and examine all programs at the U.S. Department of Education for possible elimination. The letter stated that her “comments raise questions on the purpose of the review, of the criteria by which she will judge the programs and units for their importance, mission, and efficacy, as well as any involvement or consultation of stakeholders, including seeking input from parents, teachers, and staff of education systems, students, advocates, and community members.”

Senator Murray and Congressman Scott also requested answers from Secretary DeVos regarding reports that the Trump Administration might downsize the Department of Education, possibly eliminating the post of Under Secretary and a number of deputy assistant secretary positions. The letter said that “Qualified and effective staff is critical to fulfill the Department’s mission and responsibilities.”

A copy of the letter is found at: <https://www.nasfaa.org/uploads/H5QB4B-f.pdf>.

Ranking Member of HELP Committee Patty Murray Asks DeVos to Clarify Comments Made Regarding ED Employees

On February 23, 2017, Senator Patty Murray (D-WA), Ranking Member of the Health, Education, Labor and Pensions Committee (HELP), wrote to Secretary of Education Betsy DeVos expressing concern over recent comments that she had made suggesting that she planned to take action against Department of Education employees who could be trying to “subvert” the agency’s mission. Senator Murray wrote: “Any threats or intimidations that there could be retaliation against civil servants hired by a previous Administration simply because they do not share the current Administration’s ideology would be deeply concerning, and if acted upon, potentially illegal.” Senator Murray asked the Secretary to respond to her questions by March 3, 2017.

Committee Leaders Promise Robust Oversight of New Administration in Letters to ED and HHS Secretaries

On February 16, 2017, Chairman of the House Education and the Workforce Committee Virginia Foxx (R-NC), Brett Guthrie (R-KY), Chairman of the Subcommittee on Higher Education and Workforce Development, Todd Rokita (R-IN), Chairman of the Subcommittee on Early Childhood, Elementary, and Secondary Education, wrote to Secretary of Education Betsy DeVos and Secretary of Health and Human Services Tom Price expressing their commitment to holding the Trump Administration accountable to the American people through robust congressional oversight efforts in the 115th Congress. The letter also said

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that they hoped to “establish an effective and collaborative working relationship with you and your staff during the 115th Congress. A significant part of that relationship will entail the committee’s continuing oversight efforts to ensure good governance and the protection of taxpayer dollars. Working together, we can identify and abate fraud, waste, and abuse, as well as better ensure federal policies are efficient, effective, and accountable to the American people.”

Similar letters were sent to the Secretaries of Labor and Agriculture.

A copy of the letter is to Secretary DeVos is found at:

<http://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=401344>.

Senate Votes to Approve Resolution Repealing Teaching Training Rules

On March 8, 2017, the Senate voted 59-40 to approve a resolution repealing teacher preparation and state accountability regulations published by the Department of Education in October 2016. The House of Representatives approved the resolution in February 7, 2017. The resolution now goes to President Trump who is expected to sign the resolution. The regulation stipulated that federally-funded teacher preparation programs must be evaluated based on the academic outcomes of those teachers’ students. Public and private teacher colleges and Republican senators have long-opposed the regulation.

“Overturning this regulation says that states – not a distant department in Washington, DC – are responsible for evaluating whether a college’s program gives teachers the skills they need to help their students learn,” according to Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN).

A copy of Senator Alexander’s press release is found at:

<https://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=4355AB8E-EF8F-42B1-8323-AF0738746683>.

Department Delays GE Deadlines for Appeals and Disclosures

On March 6, 2017, the Department of Education released Electronic Announcement #105 announcing that it was allowing additional time, until July 1, 2017, for institutions to submit an alternative earnings appeal to the gainful employment Debt-to-Earnings rates that were released on January 9, 2017 and comply with the GE program disclosure requirements as released in Gainful Employment Electronic Announcement #103 published on January 19, 2017. According to Electronic Announcement #105, “This action is taken to allow the Department to further review the GE regulations and their implementation.”

Electronic Announcement #105 states that institutions seeking to appeal a zone or failing rate were to provide a Notice of Intent to appeal by January 23, 2017. The January 23, 2017 deadline is not affected by the provision of additional time for submission of a final appeal.

A copy of Electronic Announcement #105 is found at:

<https://ifap.ed.gov/eannouncements/030617GEAnnounce105AddtlSubTimeAEAandGEDisReq.html>.

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A Federal Register notice was issued on March 10, 2017 and is found at:
<https://ifap.ed.gov/fregisters/attachments/FR031017.pdf>.

Department Issues Notice that Data Retrieval Tool is not Available for Several Weeks Due to Security Concerns

On March 10, 2017, the Department of Education issued an Electronic Announcement announcing that the IRS Data Retrieval Tool (DRT) is currently unavailable because of security concerns. The DRT permits students and families to transfer their federal tax data to the FAFSA. The Electronic Announcement said that the IRS and ED are investigating the system to strengthen the security of the information provided by DRT.

A copy of the Department's notice is found at:
<https://ifap.ed.gov/eannouncements/031017IRSandDeptofEdStatementAboutIRSDataRetrievalToolDRT.html>.

Department Issues Further Guidance on Third-Party Servicers

On March 8, 2017, the Department of Education issued an updated version of the set of third-party servicer Questions and Answers that address questions submitted to the Department. There are four new questions attached to the initial set of Questions and Answers that was published in DCL GEN-16-15 on August 18, 2016.

A copy of the Electronic Announcement is found at:
<https://ifap.ed.gov/eannouncements/030817UpdatedThirdPartyServicerQuestionsandAnswers.html>.

Department Updates Data on its FSA Data Center

On March 7, 2017, the Department of Education released updated data to the FSA Data Center. The updated data includes information on FAFSA volume, the makeup of the loan portfolio, enrollment in income-driven repayment plans, and new defaults and delinquency rates.

A copy of the Electronic Announcement is found at:
<https://ifap.ed.gov/eannouncements/030917FSAPostsUpdatedReportsFSADataCenter.html>.

Department Releases FY 2014 3-Year Draft Cohort Default Rates

On February 27, 2017, the Department of Education distributed the draft FY 2014 3-year cohort default rates for all eligible domestic and foreign schools only.

A copy of the Electronic Announcement is found at:
<https://ifap.ed.gov/eannouncements/022717FY20143YearDraftCohortDefaultRatesDistributedFebruary272017.html>.

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Secretary of Education Signals Plan to Expand Vocational and Technical Education

On February 16, 2017, Secretary of Education Betsy DeVos delivered a speech at the 2017 Community College National Legislative Summit hosted by the Association of Community College Trustees and the American Association of Community Colleges. In her speech, Secretary DeVos stated that “community colleges are a uniquely American national asset. You are nimble, inclusive and entrepreneurial. You provide important and valued pathways for students to prepare for success in this competitive economy. You equip students for high-demand fields and skilled jobs that help grow local economies and maintain communities.”

She signaled that both she and President Trump plan to emphasize the importance of expanding vocational and technical education, a goal included in the President’s 100-day action plan. In addition, she said that she shared President Trump’s vision that it was “an absolute priority” to provide multiple pathways for postsecondary education. She stated: “Today is the beginning of what I’m confident will be years of productive collaboration and a healthy exchange of ideas between our country’s colleges and universities and the Department of Education.”

A copy of Secretary DeVos’ prepared remarks is found at: <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-prepared-remarks-magnet-schools-america-2017-national-policy-training-conference>.

IG Releases Results of Audit that Assesses FSA Processes for Identifying Title IV Schools at Risk of Unplanned Closure

On February 24, 2017, the Department of Education’s Office of Inspector General (OIG) released the results of its audit in a report titled, “Federal Student Aid’s Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers.” The review covered the period January 2012 through July 2016, which enabled the IG to see how FSA’s processes have changed since fiscal issues first emerged at Corinthian Colleges, Inc. in February 2012 and the subsequent closure of its schools in April.

The audit report found that FSA has processes, including newer processes that were adopted in response to the Corinthian closure, as well as the new borrower defense regulations that can help FSA identify Title IV schools at risk of unexpected or abrupt closure and help mitigate the potential harm to students and taxpayers. However, the IG concluded that FSA could do more to protect students and taxpayers from these types of school closures, such as improving its processes for reviewing a school’s composite score calculation to prevent schools from manipulating composite scores to avoid sanctions or increased FSA oversight.

A copy of the IG audit report is found at:
<https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf>.

U.S. District Court Judge Denies Motion Filed by ACICS for a Preliminary Injunction

On February 21, 2017, U.S. District Judge Reggie Walton denied a motion filed by ACICS for a preliminary injunction that would have blocked the Department of Education from proceeding with the de-

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recognition of ACICS. Judge Walton said that ACICS had not demonstrated “a substantial likelihood” of prevailing on the merits of its case. Judge Walton found that then-Secretary of Education John B. King, Jr. had the discretion to give ACICS more time to comply, but that he had decided to terminate ACICS instead. Judge Walton also ruled that ACICS had failed to show that it had suffered “irreparable harm” as a result of Secretary King’s decision. Finally, Judge Walton weighed the public interest factors involved and agreed with the Department of Justice that there was an “obvious significant public interest” in protecting millions of taxpayer dollars by upholding the Department’s decision to terminate the recognition of ACICS.

NACIQI Rejects Staff Report’s Recommendation for ABHES to Expand its Scope to Include Master’s Degree Programs

On February 22, 2017, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) voted 8-2, along party lines, to recommend that the Secretary of Education deny the request of the Accrediting Bureau of Health Education Schools (ABHES) to expand its scope to include master’s degree programs. Several members of NACIQI raised questions about one of its institutions, Ultimate Medical Academy, that was run by the former chief operating officer of President Donald Trump’s Trump University. The Department’s accreditation staff had recommended to NACIQI that ABHES be approved for the expansion of scope. ABHES received full recognition at NACIQI’s last meeting in 2016. On March 6, 2017, ABHES submitted an appeal to NACIQI’s recommendation.

WICHE Study Shows that Online Courses Do Not Cost Less to Produce Than Brick and Mortar Courses

A survey conducted by the WICHE Cooperative for Educational Technologies (WCET) found that most colleges charge students the same or more to study online. When additional fees are included, more than half of the distance education students pay more than those enrolled in brick and mortar courses. The higher charges to students are related to the higher production costs of online courses. According to the authors, Russell Poulin and Terri Taylor Straut, producing an online course means licensing software, engaging instructional designers, training faculty, and offering around-the-clock student support.

A copy of the report, “Distance Education Price and Cost Report,” is found at: http://wcet.wiche.edu/sites/default/files/Price-and-Cost-Report-2017_0.pdf.

CFPB Finds that Inaccuracies in Reporting Enrollment Status Result in Student Loan Borrowers Paying Additional Interest Charges, Unexpected Loan Bills and Experiencing Loss of Eligibility for Student Loan Benefits

In February 2017, the Consumer Financial Protection Bureau (CFPB) released a report that analyzed student loan borrower complaints made to CFPB. According to CFPB, enrollment status is a determining factor for when a student must begin repaying their federal and private loans, when any unpaid interest is added to their loan balance, and how interest subsidies and other borrower benefits are applied to the borrower’s account by the student loan servicer and enrollment information is provided by the borrower’s institution. However, CFPB reported that there are many servicing problems caused by inaccurate enrollment status reporting. For instance, in many cases, students are prematurely entering into repayment despite being enrolled in college.

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A copy of the CFPB press release of February 27, 2017 is found at:
<https://www.publicnow.com/view/CEF22EF0C28685109C6C71EA3579C5F71D814474>.

Dream Center Foundation Enters into an Agreement to Acquire Education Management Corporation's Chain of Institutions

On March 3, 2017, the Dream Center Foundation announced that it was seeking to acquire Education Management Corporation's Argosy University, South University, and the Art Institutes and convert them into nonprofit institutions. The Dream Center Foundation is a Christian missionary organization that funds programs that provide education, emergency food, medical services and transitional housing to homeless families, young people and veterans in 41 states and 21 countries. The acquisition does not include Brown Mackie University and 19 Art Institutes, which are being taught out by EDMC.

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