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# **The Federal Update for February 7, 2025**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: February 7, 2025

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## Legislation and Guidance

### ED Withdraws January Notice on UGG Implementation

In a *Federal Register* notice announced this morning, the U.S. Department of Education (ED) withdrew its January 16th guidance on the applicability of the new 2024 Uniform Grants Guidance (UGG).  The instructions note that courts apply the grants requirements that were in effect at the time the grant was made, and do not generally permit grant requirements to apply retroactively.

The new modified box 10 in the Grant Award Notifications will state that the updated UGG will only apply to grants awarded on or after October 1, 2024. For grants made prior to that date, the language states that the UGG in effect at the time of the award governs, “*provided that* for grants issued on or after June 21, 2024, where grantees drew down funds under the previous version of Box 10, those grants are subject to Title 2 CFR part 200 as revised [April 22, 2024].”

Although ED frames this announcement as an effort “to remove any uncertainty or ambiguity,” it does not clarify what “previous version of Box 10” it is referencing, creating some confusion on whether grants issued on July 1, 2024 would be subject to the UGG as revised April 22, 2024, or the prior version revised as of August 2020.

[The draft federal register notice is here](https://public-inspection.federalregister.gov/2025-02396.pdf), it will be formally published on February 10th.

Author: JCM

## News

### Lawmakers Ask for Details on ED Impacts of Funding Freeze

Lawmakers on the House and Senate Education Committees wrote to Acting Secretary of Education Denise Carter this week asking for more information about the potential longer-term impact of funding freezes and rumored policy changes within the federal government.

The letter is signed by Ranking Member of the Committee on Senate Health, Education, Labor, and Pensions, Bernie Sanders (I-VT), Senate Appropriations top democrats Patty Murray (D-WA) and Tammy Baldwin (D-WI), as well as House Appropriations Committee Ranking Member Rosa DeLauro (D-CT) and House Committee on Education and Workforce Ranking Member Bobby Scott (D-VA).

The letter notes that staff have been put on leave for attending training and alleges that some staff from “the entity referred to as the Department of Government Efficiency” have gained access to U.S. Department of Education (ED) systems, including federal financial aid systems that “include personally identifiable information on millions of students.”

The letter expresses concern about individual data security, as well as the future of ED. The authors ask for information by today regarding all individuals who have been granted access to sensitive information, the training they have received on information security, steps that ED has taken to protect information, a list of all individuals placed on administrative leave or terminated from the agency, communications to those employees, and confirmation that ED has not “frozen, paused, impeded, blocked, cancelled, or terminated” any awards since January 20th.

Scott also submitted a request to the non-partisan Government Accountability Office on Friday asking the agency to investigate ED’s information technology systems, as well as whether DOGE’s access to student records is legal under federal data privacy laws.

[The letter to ED regarding staffing and data information is here](https://www.appropriations.senate.gov/imo/media/doc/250206_letter_to_edpdf.pdf).

Author: JCM

### Student Organization Sues ED After Privacy Concerns

Following reports that the U.S. Department of Education (ED) provided access to student data to the Department of Government Efficiency (DOGE), the University of California Student Association filed a lawsuit against Acting Secretary of Education Denise Carter and ED on Friday. The student association is filing for “declaratory and injunctive relief to halt Defendants’ unlawful ongoing, systematic, and continuous disclosure of sensitive personal and financial information contained in ED’s records” to DOGE.

The student records of concern in the lawsuit are those of 42 million federal student loan borrowers and their parents and spouses and include information such as social security numbers, contact information, birth dates, and other data points. The lawsuit argues that DOGE access to these records violates the Internal Revenue Code, the Privacy Act of 1974, and its implementing regulations, which “prohibit Defendants from disclosing records on individuals to any person without the individual’s consent except in specified circumstances.” The Association also states that the action is “arbitrary and capricious” and in “excess of statutory authority” under the Administrative Procedure Act, as ED “failed to engage in reasoned decisionmaking when [it] implemented a system under which Elon Musk or other individuals associated with DOGE could access ED’s records” contrary to federal law.

The Association asks the court to declare that the access to records was unlawful and to halt continued access to the financial aid records, as well as to require DOGE members to recover any transferred records, reverse any changes made, and destroy copies of the records, among other relief actions.

[The full lawsuit is available here.](https://www.defendstudents.org/news/body/1-Complaint.pdf)

Author: KSC

### Education Organizations File Lawsuit Against EO on DEIA

The American Association of University Professors and the Association of Diversity Officers in Higher Education, along with the Restaurant Opportunities Centers United and the Mayor and City Council of Baltimore, Maryland, filed a lawsuit in district court this week against President Trump’s recent Executive Order (EO) halting all diversity, equity, inclusion, and accessibility (DEIA) initiatives and activities across the federal government.

In addition to federal agencies eliminating programs and activities implicated by the EO, the EO has led federal agencies to place staff on leave who were directly involved in such programs, including serving on federal agency equity councils or leading and participating in DEIA training contracts.  Approximately 50 U.S. Department of Education employees who previously attended a one-time DEIA training program were placed on leave late last week.

The lawsuit filed this week says that the EO is unconstitutionally vague in violation of the U.S. Constitution’s Fifth Amendment, as it does not define key terms such as “DEIA,” “equity-related,” or what it means to advance such programs.  The plaintiffs also argue that the EO violates the spending clause and the separation of powers in the U.S. Constitution that gives Congress the “power of the purse” and prevents a President from “unilaterally” eliminating federal grants and contracts.  Finally, the lawsuit alleges that the EO violates First Amendment free speech protections.

The lawsuit filed this week joins a growing list of legal challenges against executive action taken by President Trump since he was sworn into office on January 20th.

Resources:

Bianca Quilantan, “Education groups sue to block Trump’s DEI orders,” *Politico*, February 4, 2025.

Author: KSC

### DOJ Forms Antisemitism Task Force with School Priority

In response to President Trump’s Executive Order on antisemitism, the U.S. Department of Justice (DOJ) established a Task Force to Combat Antisemitism. The task force’s first goal is to “root out anti-Semitic harassment in schools and on college campuses.”

The new Executive Order, titled “Additional Measures to Combat Anti-Semitism,” was an extension of his 2019 order and tasked federal agencies with identifying “criminal and civil authorities or actions” that could be used to combat antisemitism. It also requires agencies to provide a report of all related complaints against or involving institutions of higher education and specifically mandates that the U.S. Department of Education provide a report of all Title VI complaints, including those against K-12 institutions.

As a first step in carrying out the order, the DOJ’s Office of Civil Rights launched the task force, which will include representatives from other federal agencies including the U.S. Department of Education and the U.S. Department of Health and Human Services. The President picked former Fox News contributor, Leo Terrell to serve as senior counsel to the assistant attorney general for civil rights. Terrell stated that the new task force was “the first step in giving life to President Trump’s renewed commitment to ending anti-Semitism in our schools.”

[A press release on the DOJ’s new task force is available here.](https://www.justice.gov/opa/pr/justice-department-announces-formation-task-force-combat-anti-semitism)

Resources:

Juan Perez Jr., “Justice Department antisemitism task force will focus on schools,” *Politico*, February 3, 2025.

Author: BTW

### New Executive Order Limits Participation in Women’s Sports

An Executive Order signed late Wednesday addresses President Trump’s campaign promise to “keep men out of women’s sports.” The order leverages Title IX of the Education Amendments of 1972, which applies to all “recipients” of federal funds, whether direct or indirect. It argues that allowing open participation in sports is “demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports.”

The order incorporates definitions from a prior executive order, which says that “women” or “girls” are persons “belonging, at conception, to the sex that produces the large reproductive cell” and boys or men are those “belonging, at conception, to the sex that produces the small reproductive cell.”

The U.S. Department of Education is instructed to formally rescind the 2024 regulations on Title IX per a court order from a Federal District Court in Kentucky earlier this year and update regulations and guidance to align with this policy as well as “pending litigation consistent with this policy.” Title IX enforcement should be “prioritize[d],” per the order, against institutions – including “athletic associations composed of or governed by such institutions,” which may include many K-12 and college athletic conferences.

All agencies are also being directed to review grants to educational programs and “rescind funding to programs that fail to comply,” and the Justice Department is expected to provide resources to agencies “to ensure expeditious enforcement of the policy established in this order.”

Still, this policy would conflict with State law in many instances where States allow students to participate in athletics consistent with their gender identity. When a group of States sued the Biden administration over its broad interpretation of Title IX to extend protections based on gender identity, a federal court judge in Tennessee said that the executive branch alone could not make policies that interfered with a State’s ability to make and enforce its own laws, or to strip State interests of funding to accomplish those policies.

On Thursday, the administration announced that it is launching investigations into San Jose State University, the University of Pennsylvania, and the Massachusetts Interscholastic Athletic Association. These investigations allege that allowing trans athletes to participate on women’s sports teams reportedly resulted in other students losing scholarships, discomfort in sharing locker rooms, injury to players and concerns about injury which led women’s teams to forfeit games, as well as reported retaliation against students who disagreed with university policy.

[The text of the executive order on women’s sports is here](https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/).

Author: JCM

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of the Bruman Group’s upcoming virtual trainings.  Our winter webinar series will cover a range of grants management issues, including how ED’s mid-year UGG implementation impacts indirect costs, procurement, property management, and more.  To view all upcoming virtual training topics and to register, visit* [*www.bruman.com/training-and-recordings/*](http://www.bruman.com/training-and-recordings/)*.*

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