

# **The Federal Update for February 21, 2025**

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Re: Federal Update

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##  Legislation and Guidance

### Dear Colleague Letter Threatens Funding Over Race-Based Programs

On Friday, February 14th, the U.S. Department of Education (ED) sent a letter to recipients of federal funding notifying them that they will “no longer tolerate the overt and covert racial discrimination that has become widespread in this Nation’s educational institutions” – specifically against white and Asian students – and will “vigorously enforce” discrimination laws, including termination of federal financial aid. ED said it will begin to take enforcement measures consistent with their interpretations after February 28th.

In the letter, ED cited the Supreme Court’s 2023 decision in *Students for Fair Admissions v. Harvard* as the basis for its determination that any treatment of a person of one race differently from another violates Title VI of the Civil Rights Act of 1964. This includes, the letter says, programs that distribute benefits based on race and diversity, equity, and inclusion (DEI) programs. In the *Students for Fair Admissions* case, the Supreme Court found that racial preference in college admissions violates the Equal Protection Clause. Although the *Students for Fair Admissions* case only addresses college admissions, ED argues that it can broadly expand the reach of the decision to cover all aspects of student life.

The prevalence of “discriminatory policies and practices” is based on institutions’ reliance on a “false premise that the United States is built upon ‘systemic and structural racism,’” ED writes. The letter states that some programs appear to not be discriminatory on their face but are actually motivated by considerations of race. For example, ED cites the practice of using student admissions essays to determine race and provide a benefit based on race. Further, the letter says that it would be unlawful for an institution to forgo standardized testing requirements to achieve increased racial diversity.

To comply with these new interpretations by February 28th, ED states that all educational institutions that receive federal funds should ensure their policies and actions comply with the law, end any efforts to avoid legal prohibitions on the use of race, and end relationships with third parties that are used to avoid the prohibition on the use of race. This prohibition would apply to all programs operated by an institution, regardless of funding source.

In a follow-up notice sent Sunday, ED says that the initial Dear Colleague letter requires educational agencies to halt the use of race in admissions decisions and in “hiring, compensation, promotion, scholarships, prizes, sanctions, and discipline.” It adds that programs that are based on race must be terminated, and educational institutions must cease making decisions, such as in scholarship determinations, based on race or “proxies” for race.

The letter has already faced scrutiny from multiple groups, with some, including the American Federation of Teachers, which called the letter illegal and an overreach by ED.

[The Dear Colleague Letter is available here](https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf) and [the follow-up here](https://www.ed.gov/about/news/press-release/us-department-of-education-directs-schools-end-racial-preferences).

Author: BTW

### ED Says It Will Review Remaining Stimulus Expenditures Before Drawdown

In a letter sent to States Wednesday, the U.S. Department of Education (ED) said that the agency would change its funding disbursement process for remaining COVID-19 relief funds – those funds allocated under the Elementary and Secondary School Emergency Relief Fund (ESSER), the Governor’s Education Emergency Relief Fund (GEER), and the Higher Education Emergency Relief Fund (HEERF).

An email sent with the letter says that “[e]ffective immediately, all COVID-related funds disbursed from the U.S. Department of Education will require pre-expenditure on behalf of the recipient.”  After that point, “all receipts will be reviewed to ensure alignment with approved uses of funds prior to reimbursement.”

It is not clear from the letter which office within ED will conduct the expenditure review, however, it cites a need for “oversight and efficiency” as the reason for the change.

[The letter from ED is here](https://www.ed.gov/media/document/covid-relief-payment-process-109509.pdf).

Author: JCM

### New Grant Appeals Process Announced by ED

In a document posted on the U.S. Department of Education’s (ED’s) website this week, the agency said it was establishing new processes for appeals of grant terminations.

Under the new procedures published this week, appeals of termination of a grant will be made to the Assistant Secretary of the unit which makes the grant. Recipients will submit their appeal by email and mail within 30 days of the notice of termination or other adverse action and must include a copy of the notice, the date the recipient received the notice, a statement of the argument and disputed issue, the amount of funds in dispute, and any other relevant documentation.

Previously, such appeals were heard by the Office of Administrative Law Judges (OALJ). Under federal regulations, the Secretary may – but is not required to – use the OALJ as an independent arbiter for deciding appeals. OALJ decisions are appealable to the Secretary, but the office generally operates as separate from the policy-based decision-making process.

[The new processes are available here](https://www.ed.gov/media/document/grant-appeals-procedure-109496.pdf).

Author: JCM

### President Signs Executive Order on Deregulation

President Trump signed a new Executive Order on Wednesday, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” which aims to identify “unlawful regulations and regulations that undermine the national interest.”

The order directs the heads of federal agencies to work in coordination with the Department of Government Efficiency (DOGE) and the Office of Management and Budget (OMB) to identify certain categories of regulations within 60 days. Categories of regulations that must be identified include:

* Unconstitutional regulations or those that “raise serious constitutional difficulties”;
* Regulations that do not align with the “best reading of the underlying statutory authority”;
* Regulations involving social or political issues or issues of economic significance;
* Regulations based on “unlawful delegations of legislative power”;
* Regulations for which the cost placed on “private parties” is not “outweighed by public benefits”;
* “Regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives”; and
* Regulations that encumber small businesses or pose barriers for entrepreneurship.

After agencies submit the required report to the OMB’s Office of Information and Regulatory Affairs, the administration will incorporate any rescissions of identified regulations into its regulatory agenda. The Order also directs agencies to work with OMB to determine on a “case-by-case basis” if any ongoing enforcement action related to the identified regulations should be halted. In addition, agencies are instructed to consult with DOGE “team leads” and OMB on any future planned regulations to ensure compliance with this Executive Order.

This Order builds upon other deregulation actions taken by the President, including an Order for agencies to withdraw at least 10 regulations, rules, or guidance documents for every new one issued. Under the prior Trump administration, similar deregulatory efforts led to the rescission of hundreds of regulations and guidance documents at the U.S. Department of Education.

[The full Executive Order is available here](https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/).

Author: KSC

### OCTAE Issues Guidance on State Plan Policy Reversal

The U.S. Department of Education’s (ED’s) Office of Career, Technical, and Adult Education (OCTAE) sent a program memorandum to State directors on Thursday clarifying States’ responsibilities regarding their fiscal year (FY) 2025 State plan in light of ED’s recent decision to reverse changes made to the Perkins V State plan template.

Earlier this month, ED announced the rescission of the new requirement for States to use numerator and denominator specifications established by OCTAE when developing their State-determined levels of performance for core indicators under the Perkins V program. In the memo this week, OCTAE confirmed that the prior version of the State plan guide, before the requirements were changed, is the version that States must adhere to moving forward. The memo also reiterates the State plan submission and update requirements outlined in the Perkins V statute, noting that States must submit new State plans every four years or provide annual revisions to their State-determined levels of performance. States submitted new or updated plans last year to cover fiscal years 2024-2028, as part of the second four-year cycle under Perkins V, and before the changes to the State plan guide were introduced. The State plans submitted in FY 2024 should be in compliance with current policy and should not require significant changes that would trigger stakeholder engagement requirements.

However, the memo indicates additional guidance is forthcoming, stating that: “The Department will soon issue a proposed reinstated version of the Guide that includes detailed instructions regarding the content and procedures an eligible agency must use for the submission of FY 2025 and subsequent program years covered by the Guide.”

If States do plan to make any modifications to their current State plans for FY 2025, revisions must be submitted by May 9, 2025 in the Perkins V State plan portal, or the Workforce Innovation and Opportunity Act (WIOA) State plan portal if it is a combined plan with WIOA. States must ensure that they comply with public engagement requirements under Perkins V for annual State-determined levels of performance updates or other significant changes to their plans.

Author: KSC

## News

### Senate HELP Committee Advances Linda McMahon Nomination

The Senate Committee on Health, Education, Labor, and Pensions (HELP) voted along party lines Thursday to advance President Trump’s nominee, Linda McMahon, for Secretary of Education. McMahon’s nomination now awaits approval by the full Senate in the coming weeks.

As McMahon faced the Committee for questioning last week, Democrats on the Committee expressed concerns about the administration’s actions to date impacting education, as well as future policy initiatives planned. The Committee’s vote comes after 86 civil rights and education groups submitted a letter to Congress earlier this week urging members to vote “no” on McMahon’s nomination. In their letter, the organizations raise concerns about McMahon’s qualifications, saying her “defense that she hopes to learn on the job what is required of a Secretary of Education would be a disqualifying answer in any environment. In this moment where the threats to education are so overwhelming, and so much damage has already been done in the first few weeks of this new administration, McMahon’s response is even more alarming.”

McMahon has gained support among conservatives, however, and her nomination is expected to be approved by the full Senate.

Author: KSC

### Subcommittee Members Announced for Senate HELP

The Senate Committee on Health, Education, Labor, and Pensions (HELP) announced its subcommittee members this week, with the subcommittee overseeing education issues renamed from the Subcommittee on Children and Families to the Subcommittee on Education and the American Family.

Senator Tommy Tuberville (R-AL) is the subcommittee’s Chair, with Senator Lisa Blunt Rochester (D-DE) serving as the ranking member. Tuberville served as a member on the Subcommittee under the previous Congress, but Blunt Rochester, previously the House representative from Delaware, is new to the subcommittee as she is serving her first Senate term.

Other Republicans on the subcommittee include Rand Paul (KY), Lisa Murkowski (AK), Tim Scott (SC), Jim Banks (IN), Jon Husted (OH), Ashley Moody (FL), and Bill Cassidy (LA). And Democrats on the panel include Patty Murray (WA), Tim Kaine (VA), Ed Markey (MA), Andy Kim (NJ), Angela Alsobrooks (MD), and Bernie Sanders (I-VT).

The Subcommittee is responsible for considering any legislation impacting federal education prior to referring it to the full HELP Committee, as well as holding hearings on issues affecting federal education.

Author: KSC

### DOGE Regains Access to ED Data Systems After Temporary Pause

Following a court hearing on Monday, a federal district judge decided to continue allowing Department of Government Efficiency (DOGE) staff to access U.S. Department of Education (ED) data systems. A University of California student organization filed a lawsuit earlier this month arguing that DOGE was violating federal privacy laws by accessing student and family data stored in the ED system, including financial aid systems. An initial agreement reached between the plaintiffs and ED halted DOGE’s access to those systems until February 17th.

Although the student organization asked the judge to issue a temporary restraining order, which would limit DOGE access to the data in question while the case proceeds, the judge determined that the argument was based on potential harm in the future and that the organization failed to show how DOGE’s access would cause “irreparable harm” to the plaintiffs. As a result, the judge declined to issue a temporary restraining order, allowing DOGE staff to regain access to the ED systems this week, in accordance with the original pause agreement. The judge did leave open the possibility for future relief, however, depending on the final outcome of the lawsuit.

A second lawsuit was also filed this month by several labor organizations against DOGE’s access to data at multiple federal agencies, including ED.

Resources:

Natalie Schwartz, “Court declines to block DOGE from accessing Education Department data,” *Higher Ed Dive,* February 18, 2025.

Author: KSC

*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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