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# **The Federal Update for February 28, 2025**

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

Re: Federal Update

Date: February 28, 2025

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## Legislation and Guidance

### White House Orders Agencies to Plan for Staffing Cuts

In a memorandum from the Office of Management and Budget (OMB) Wednesday, the White House ordered agencies to create plans for reducing their staffing and real estate.

In the memo, OMB Director Russell Vought says that “[t]he federal government is costly inefficient, and deeply in debt.” To remedy that stated issue, Vought directs agencies to develop “Agency [Reductions in Force (RIF)] and Reorganization Plans,” referred to as ARRPs, which should increase productivity and service, reduce spending and include a “significant reduction in the number” of federal employees.

Vought adds that agencies should submit ARRPs, which identify two phases of action. The first phase – for which agencies must submit plans by March 13th – requires a list of offices that provide “direct services to citizens,” those required by statute, those not required by statute, suggestions for eliminating or consolidating offices, a list of positions that are essential, and tools to be used to reduce staffing. Tools identified for accomplishing these cuts include continuing a hiring freeze and requiring leadership sign-off for hiring, eliminating activities that are not statutorily mandated, renegotiating collective bargaining agreements, and removing “underperforming” employees, term positions, and retired annuitants, as well as large-scale RIFs.

Agencies will then submit their second-phase ARRP plans to OMB by April 14th. These second-round plans would include a proposed organization chart, plans for greater efficiency and RIFs, and proposals to relocate agency bureaus and offices to “less-costly parts of the country,” among others. Agencies would also have to certify that they have reviewed all staff performance data and that plans would have a “positive impact” on the delivery of services.

Some government positions – including law enforcement, national security, public safety, immigration, military, and postal service – are exempt from these instructions.

“Pursuant to the President’s direction, agencies should focus on the maximum elimination of functions that are not statutorily mandated while driving the highest-quality, most efficient delivery of their statutorily-required functions,” the memo reads.

Author: JCM

## News

### ED Launches Title IX Investigations

After Maine’s Governor, Janet Mills, clashed with the President publicly over Title IX last week, two federal agencies have announced investigations into the State’s practices. The U.S. Department of Education (ED) has announced it will investigate practices of the Maine Department of Education (MDE) and one of its school districts over the State’s decision to accommodate transgender athletes in sports that align with their gender identity. The U.S. Department of Agriculture (USDA) has similarly announced that it will investigate the University of Maine system based on existing athletics policies. USDA provided the Maine university system with nearly $30 million in research funding in 2024.

Maine has argued that it is following existing federal law and court precedent, as well as State laws, in extending protections under Title IX of the Education Amendments of 1972 to students based on gender identity as well as biological sex. But ED and other agencies – with the backing of the White House – has argued that Title IX only protects students based on their genetic or biological sex at birth, and that accommodating students based on gender identity is a violation of the law, disadvantaging or endangering other participants.

ED has also announced investigations into the Minnesota State High School League and the California Interscholastic Federation, both of which had publicly stated they would continue with their existing policies. The U.S. Department of Justice (DOJ) has reportedly sent a letter to all three States, saying that the agency “will hold accountable states and state entities that violate federal law” and that States “should be on notice.” DOJ’s letter says that Maine’s policy and State laws violate the constitution and established law – a statement that Maine and other States have contested, given the conflicting federal standards around gender identity and discrimination.

“This Department of Justice will defend women and does not tolerate [S]tate officials who ignore federal law,” said Attorney General Pam Bondi in a statement. “We will leverage every legal option necessary to ensure [S]tate compliance with federal law and President Trump’s Executive Order protecting women’s sports.”

[The letter to Maine from DOJ is here](https://www.justice.gov/ag/media/1390796/dl).

Author: JCM

### Teachers Union Sues ED Over DEI Dear Colleague Letter

The American Federation of Teachers and the American Sociological Association filed a lawsuit against the U.S. Department of Education (ED) this week that argues the agency’s recent Dear Colleague Letter (DCL) regarding the use of federal funds for diversity, equity, or inclusion (DEI) programs is unconstitutional.

The DCL, which was issued on February 14th by ED’s Office for Civil Rights, tells recipients that the 2023 Supreme Court ruling determining that affirmative action programs are unlawful prohibits entities receiving federal assistance from ED from “using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.” The letter relies on Title VI of the Civil Rights Act as well, which prohibits discrimination based on race, color, or national origin. Although the Supreme Court decision on affirmative action, *Students for Fair Admissions v. Harvard*, was limited to the consideration of race in higher education admissions, ED takes the position in its DCL that the case applies more broadly.

The lawsuit filed this week claims the DCL violates the Constitution’s First Amendment Free Speech and Free Association protections and the Fifth Amendment due to the vagueness of the letter. In addition, the plaintiffs argue that the letter should be invalidated as arbitrary and capricious under the Administrative Procedure Act.

In addition to the lawsuit filed Tuesday, more than 50 higher education organizations submitted a letter to ED asking the agency to rescind its DCL as “the DCL’s ambiguous language has only led to confusion on campuses about their compliance responsibilities.” The letter notes that there is not a clear definition for “DEI” in the guidance and that institutions are unclear on their legal obligations, including how previously legal programs may now be in violation of ED’s interpretation of civil rights law and Supreme Court precedent. The organizations also urge ED to consult with stakeholders regarding Title VI and other civil rights law compliance.

ED plans to begin assessing compliance with the new policy on February 28th. As part of that effort, ED announced a new “End DEI” portal on Thursday, where members of the public can submit information regarding potential sex and racial discrimination at K-12 schools. In its press release, ED stated it may initiate civil rights investigations of identified schools and districts based on the submitted information.

[The higher education letter to ED is available here](https://www.acenet.edu/Documents/Letter-ED-DCL-022525.pdf).

Author: KSC

### Judge Blocks Administration From Enforcing DEI Orders

A federal judge in Maryland issued a preliminary injunction on Friday prohibiting federal agencies from enforcing certain portions of President Trump’s executive orders targeting diversity, equity, and inclusion (DEI). Plaintiffs in the *National Association of Diversity Officers in Higher Education v. Trump* case argue that portions of the executive orders are unconstitutionally vague, infringe on free speech protections, and violate separation of power principles.

The President issued two executive orders on DEI within his first two days in office. The first order requires federal agencies to terminate “equity-related” contracts and grants and the second requires federal agencies to include a term in all contracts and grants that certifies recipients will not operate or promote DEI programs.

Judge Adam Abelson’s ruling prevents the administration from terminating grants and contracts for being “equity-related,” since the language leaves grant recipients “unsure about what activities are prohibited.” He writes, “[t]he possibilities are almost endless, and many are pernicious. If an elementary school receives Department of Education funding for technology access, and a teacher uses a computer to teach the history of Jim Crow laws, does that risk the grant being deemed “equity-related” and the school being stripped of funding?”

The preliminary injunction also prevents agencies from bringing enforcement actions against grantees and contractors who violate these executive orders. However, Judge Abelson continued to allow the administration to investigate and issue reports on DEI practices.

Although the ruling prevents altering grants and contracts to align with the DEI orders, most grants and contracts already include language that grantees and contractors must follow anti-discrimination laws. Therefore, agencies may take the position that it is not contravening the injunction when they take enforcement actions based on DEI policies that they believe violate anti-discrimination laws.

Resources:

Lea Skene and Lindsay Whitehurst, “Judge largely blocks Trump’s executive orders ending federal support for DEI programs,” *Associated Press*, February 21, 2025.

Author: BTW

### Federal Judge Blocks DOGE From Accessing ED Data

A federal judge on Monday issued a temporary restraining order blocking the Department of Government Efficiency (DOGE) from accessing personally identifiable information in databases at the U.S. Department of Education (ED) and the Office of Personnel Management.

DOGE was previously blocked from accessing ED data systems under a short-term agreement in a separate lawsuit, but that block was lifted last week after the judge declined to issue a temporary restraining order. In that case, the judge determined that there was no immediate harm to the plaintiffs resulting from DOGE accessing the data.

The decision this week results from a second lawsuit filed by a number of labor unions against ED and other agencies regarding DOGE access to sensitive personal information, which plaintiffs argue violates federal privacy laws. The temporary order issued Monday is in effect until March 10th. In the order Monday, the judge states that the administration has not provided a reason why DOGE needs access to ED data systems, like financial aid systems, to conduct its work.

Resources:

Danielle Douglas-Gabriel, “Judge temporarily blocks DOGE access to sensitive information at two agencies,” *Washington Post,* February 25, 2025.

Author: KSC

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