

Beyond “The Maximum Extent Permitted By Law”

Legal Analysis of the U.S. Department of Education’s Transfers of Programs to Other Federal Agencies

December 4, 2025

President Trump [issued](#) an executive order on 3/20/25 directing Secretary of Education Linda McMahon to, “to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education” (emphasis added). In the latest of several moves to pursue what she has called the agency’s “[final mission](#),” Secretary McMahon has begun transferring many U.S. Department of Education (USED) functions and funds to other federal agencies via a series of interagency agreements (IAAs). Putting aside the question whether these transfers are “appropriate” as a matter of sound educational policy, this resource explores whether they are “permitted by law.”¹

We conclude there are significant legal issues that likely make these IAAs unlawful. They appear to violate on their face applicable appropriations laws enacted by Congress that prohibit USED from transferring funds in this way. And they likely exceed the statutory authorities cited by the Administration to justify these kinds of wholesale transfers designed to dismantle USED without congressional action.²

BACKGROUND

In 1979, Congress established USED through the Department of Education Organization Act (DEOA). Finding that the “dispersion of education programs across a large number of Federal agencies has led to fragmented, duplicative, and often inconsistent Federal [education] policies,” Congress created USED to “promote the general welfare of the United States,” to “help ensure that education issues receive proper treatment at the Federal level,” and to “enable the Federal Government to coordinate its education activities more effectively.”³ Congress then organized USED into thirteen unique offices, each of which has its own statutory authority to manage key education programs.⁴

The Trump Administration has made clear its desire to eliminate USED, from [campaign promises](#) to the closure [executive order](#) to recent [public statements](#). Although it has continued to acknowledge that

¹ These developments are sometimes changing rapidly, and we will continue to monitor and update our analyses. This resource is meant to provide general guidance and does not constitute specific legal advice.

² Our analysis applies consistently to six of the seven IAAs announced to date. The [IAA](#) regarding the National Committee on Foreign Medical Education and Accreditation (NCFMEA) may not face the same legal challenges as the other IAAs. It does not appear to involve transferring programmatic funds, assigns HHS a discrete and non-substantive role, and maintains USED’s responsibility for its substantive statutory responsibilities. For all of these reasons, the NCFMEA IAA is more similar than the others to USED’s historical use of IAAs. Throughout this resource, we include the NCFMEA IAA in describing background information but exclude it from our legal analysis.

³ 20 U.S.C. §§ 3401–02.

⁴ 20 U.S.C. §§ 3411 *et seq.*

congressional action is necessary to officially eliminate the agency, the Administration has unilaterally taken a number of steps to hollow it out.⁵ The seven IAAs detailed on the following page—with more potentially to come—are particularly consequential. Secretary McMahon has repeatedly referred to the IAAs as a “[proof of concept](#)” to help convince members of Congress that it should shutter USED on a permanent basis.

But the scope of the IAAs demonstrate that they go far beyond a typical “proof of concept” or trial program. The IAAs are not a small pilot designed to test a new policy or process before considering whether to replicate. Together, the seven IAAs announced so far appear to affect over 80 federal grant programs that are collectively responsible for nearly \$34 billion in education funding, or 43% of the agency’s annually-appropriated funds.⁶ Most notably, almost all elementary and secondary education grant programs would now be administered and overseen by the Department of Labor (DOL), including \$18 billion in Title I funding for schools serving low-income students. Furthermore, the IAAs each indicate that they “will remain in effect until terminated by the Parties,” calling into question the claims that these are “proof of concept” programs designed to illustrate for Congress how a future without USED would work.

The following table details the USED offices and K-12 and higher education programs affected by each of the seven IAAs. See the Appendix for lists of the specific grant programs affected by each transfer.

Description of Affected Programs (with links to each IAA and fact sheet & an excerpt of USED’s stated programmatic rationale)	Sending USED Office(s)	Receiving Agency	Annual Funding Involved ⁷ (Estimate)
<p>IAA (fact sheet) moved all of the career and technical education (CTE) programs funded by the Perkins Act and the adult education and family literacy programs funded under Title II of the Workforce Innovation and Opportunity Act (WIOA).</p> <ul style="list-style-type: none"> • <i>USED rationale</i>: “to create an integrated federal education and workforce system” 	Office of Career, Technical, and Adult Education (OCTAE)	Labor	Nearly \$2.2 billion ⁸

⁵ Among other things, the Administration has also moved forward (with the Supreme Court’s temporary allowance) with a plan that has reduced the USED workforce by around 50%, through the combination of a large reduction in force (RIF), terminating probationary employees, and incentivizing other employees to leave. USED has also terminated, discontinued, or frozen an array of grants and contracts, which have interrupted research studies, data collections, teacher preparation programs, technical assistance to states and districts, and more.

⁶ This is the percentage of USED’s FY24 “discretionary” funds that must be appropriated each year, such as Title I or IDEA. It excludes the agency’s “mandatory” funds, such as student loans and Pell grants. For more on this topic, see “[Department of Education Funding: Key Concepts and FAQ](#),” a 2019 report by the Congressional Research Service.

⁷ Because FY25 spending plans have not been made publicly available, the table’s funding levels for each row may be based on either their FY25 Continuing Resolution level or final FY24 Omnibus Appropriations bill level. The funding levels used to calculate these totals do not account for recent grant cancellations or funds reprogramming.

⁸ This IAA indicates USED will transfer to DOL “up to \$2,673,000,000 in FY25 for funds appropriated in FY24 and FY25, other sums in future fiscal years, and (as applicable) for past fiscal years.”

Description of Affected Programs (with links to each IAA and fact sheet & an excerpt of USED’s stated programmatic rationale)	Sending USED Office(s)	Receiving Agency	Annual Funding Involved⁷ (Estimate)
<p>IAA (fact sheet) moves 13 formula and 14 discretionary grant programs supporting K-12 education, including most major formula (e.g., Title I) and competitive grants authorized under the Every Student Succeeds Act (ESSA).</p> <ul style="list-style-type: none"> • <i>USED rationale:</i> “ensuring these programs are better aligned with workforce and college programs to set students up for success at every part of their education journey” 	Office of Elementary and Secondary Education (OESE)	Labor	Over \$28 billion
<p>IAA (fact sheet) moves 23 postsecondary programs authorized under the Higher Education Act (HEA).</p> <ul style="list-style-type: none"> • <i>USED rationale:</i> “to better coordinate postsecondary education and workforce development programs” 	Office of Postsecondary Education (OPE) & OESE	Labor	Nearly \$2.8 billion
<p>IAA (fact sheet) moves 12 international and foreign language education programs funded under the HEA and the Mutual Educational and Cultural Exchange Act, including the Fulbright-Hays program.</p> <ul style="list-style-type: none"> • <i>USED rationale:</i> “State already administers the Fulbright Program and is best positioned to tailor foreign education programs with the national security and foreign policy priorities of the United States.” 	Office of Postsecondary Education (OPE)	State	Over \$85 million
<p>IAA (fact sheet) moves 14 K-12 and postsecondary Indian education programs.</p> <ul style="list-style-type: none"> • <i>USED rationale:</i> “solidifying the agency as the key point of contact for Tribes and Native students” 	OESE, OPE, OCTAE & Office of Special Education and Rehabilitative Services (OSERS)	Interior	About \$435 million
<p>IAA (fact sheet) moves the Child Care Access Means Parents in School Partnership (CCAMPIS) grants authorized under the HEA.</p> <ul style="list-style-type: none"> • <i>USED rationale:</i> “As HHS already oversees child care-focused grants, this partnership will bring much needed efficiency and coherent guidelines to the execution of the CCAMPIS program.” 	Office of Postsecondary Education (OPE)	HHS	\$75 million
<p>IAA (fact sheet) moves the National Committee on Foreign Medical Education and Accreditation (NCFMEA).</p> <ul style="list-style-type: none"> • <i>USED rationale:</i> “to apply the expertise of HHS staff to evaluating whether the standards of accreditation for foreign medical schools are comparable with the standards for medical schools in the U.S.” 	Office of Postsecondary Education (OPE)	HHS	No dedicated funding

USED [announced](#) the first IAA on 7/15/25 to shift significant responsibility for CTE and adult education to DOL.⁹ On 11/18/25, USED [announced](#) that it entered into the six additional IAAs listed above, transferring multiple programs to DOL, Health and Human Services (HHS), State, and Interior.¹⁰ Regarding the rationale for these shifts, USED’s press release and officials’ public statements refer to both narrow programmatic reasons for partnering with other agencies about specific grant programs (see excerpts in the table above) alongside broader references to the Administration’s overall goal to eliminate USED and “return education to the states.” Secretary McMahon previewed the moves in a [recent column](#).¹¹

⁹ The USED/DOL IAA was actually agreed to on 5/21/25 but delayed due to a (since-reversed) preliminary injunction in a lawsuit challenging USED’s March RIF. USED first disclosed the existence of the IAA on 6/10/25 when it submitted Exhibit B of a [status update](#) to the district court in [State of New York v. McMahon](#), the case in which the Supreme Court later allowed the USED to proceed with the large RIF it had initiated. In that June update, USED noted ways it was complying with the court’s then-in-effect preliminary injunction. Among its compliance efforts, USED noted that:

“[T]he Department continues to pause implementing significant interagency agreements, preventing the Department (and other agencies) from pursuing operational efficiencies and cost-savings. For example, on May 21, 2025 the Department executed an interagency agreement with the Department of Labor regarding administration of certain career, technical, and adult education grants.”

After the Supreme Court [lifted the injunction](#) on 7/14/25, USED restarted the RIF by setting a new 8/1/25 termination date for ~1400 employees. On 7/15/25, USED also announced the USED/DOL IAA would go into effect.

¹⁰ The latest IAAs were signed by USED and the “receiving” agencies on 9/30/25, the day before the government shutdown began, but were not publicly disclosed for over six weeks.

¹¹ Various Administration statements, including by President Trump, have named a number of other potential transfers, including moving special education to HHS, research and development to the National Science Foundation, data and statistics to the Census Bureau or the Bureau of Labor Statistics, civil rights enforcement to the Department of Justice, and student loans to the Treasury Department or the Small Business Administration. Note that much of this resource’s analysis would likely apply to other attempted transfers of USED programs if they are similarly structured and justified, although each relevant IAA would need to be reviewed.

For example, a USED official recently [confirmed](#) that the Administration is actively seeking to transfer special education (including the Individuals with Disabilities Education Act (IDEA) and other programs and oversight functions) to another agency, most likely HHS. The statutory context for special education—like most other USED functions that have been floated as transfer candidates—is nearly identical to the programs affected by the IAAs announced so far:

- First, the \$15.4 billion that Congress appropriated to USED to administer IDEA programs in FY24 is subject to the same appropriations prohibition on transferring funds, as discussed in Section I below.
- Second, Congress vested *USED* with responsibility for administering IDEA, even designating the specific office tasked with its implementation. For example, 20 U.S.C. §§ 1402 and 3417 established the “Office of Special Education Programs” within the Department of Education as the “principal agency” to administer the IDEA. Congress even clarified in § 1401(28) that any mention of the “Secretary” within IDEA “means the Secretary of Education.” IAAs likely cannot be used to circumvent these congressional mandates, as discussed in Section II below.

ANALYSIS

The IAAs face significant issues that indicate the Administration likely lacks the legal authority to transfer USED’s functions and funds in these ways. The Administration points to a number of statutory authorities that can help the federal government facilitate collaboration among agencies, including at times the exchange of funds for services. But none likely supersede Congress’s explicit prohibition in current appropriations laws on transferring USED’s funding as the Administration plans to do here (see “Section I” below), and none likely support the wholesale transfer of congressionally mandated functions to other agencies—especially as part of an effort to eliminate that agency (“Section II”). As an internal USED [directive on IAAs](#) notes, “Specific authority to enter into interagency agreements may be provided in a program’s authorizing or appropriation statute. Such statutes may also **limit** a program’s authority to transfer funds to another agency” (emphasis added). In this instance, both types of statutes draw into question the legality of these IAAs.

Section I: Congress appears to have expressly prohibited USED from transferring funding in this way.

In calling for USED to “transfer funds as necessary to cover the costs of the activities described”—including making awards to federal grantees—these IAAs appear to violate § 512 of the [Labor, Health, and Human Services Appropriations Act for 2024](#), which states:

None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act (emphases added).

Section 512’s prohibition also applies to FY25 and FY26 funding (at least through 1/30/26).¹² None of the authorities cited by the Administration to justify the seven IAAs, excerpts of which appear under “Section II” below, qualify for the exception included in § 512 because none are appropriations acts.¹³

The same FY24 appropriations act establishes in [§ 302](#) a narrow authority for USED to transfer a small amount of its discretionary funds as follows:

SEC. 302. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: Provided, That the transfer authority granted by this section shall not be used to create any new program or to fund any project or activity for which no

¹² Section 1105 of the [FY25 Continuing Resolution \(CR\)](#) and § 108 of the recent [short-term CR](#) for FY26 both extended § 512 to the additional fiscal years.

¹³ Although one of those cited authorities, the Economy Act, was originally enacted in 1932 as an amendment to a 1920 *authorizing* law, it was later tucked into a 1932 *appropriations* act. In 1982, however, the Economy Act was recodified as a standalone law by [Public Law 97-332](#), which is not an appropriations act. Given this history, the Economy Act should *not* be considered an appropriations act and therefore cannot be the basis for circumventing the prohibition in § 512. For more background on authorities for transferring appropriations, see “[Transfer and Reprogramming of Appropriations: An Overview](#),” a 2023 report by the Congressional Research Service.

funds are provided in this Act: Provided further, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer (emphases added).

This 1% cap is too low to cover the Administration’s plans to transfer entire functions from USED to other agencies—and certainly too low to allow for the high-dollar transfers of so many formula and competitive grants funded by ESSA, Perkins, WIOA, and the Higher Education Act.¹⁴ Indeed, the existence of this limited exception in § 302 and its small cap serves only to reinforce Congressional intent limiting the massive transfers contemplated by the Administration.

Furthermore, the Administration’s only cited precedent for using IAAs to transfer grant funds in this way does *not* provide support for these transfers. In fact, it only *reinforces* how unusual these recent IAAs are. In the fact sheets accompanying the IAAs, the Administration argues that IAAs “are often used for administering grant programs. For example, in 2022, the Biden Administration’s Department of Justice, Federal Bureau of Prisons signed an IAA designating the Department of Labor (DOL) to administer grants under the First Step Act.” However, the cited precedent does not support the current IAA for two reasons:

- First, the FY22 appropriations law for DOJ *did not include* a parallel provision to § 512 that prohibited transferring funds from DOJ to another agency.
- Second, DOJ only transferred *funds* to DOL to add resources to a grant program that *Congress expressly authorized for DOL* to administer.

By contrast, the seven new IAAs face an explicit appropriations prohibition *and* are moving not just funding but also the actual administration responsibilities out of the agency that Congress authorized to implement the relevant programs. These critical distinctions actually highlight the improper legal nature of the new IAAs. Furthermore, following the 2022 transfer of Bureau of Prisons funding to the DOL grant program, Congress inserted a provision into the FY24 appropriations law for the Bureau of Prisons appropriations account that parallels § 512’s prohibition on transferring funds out of USED.¹⁵

¹⁴ The initial IAA regarding CTE and adult education grants is illustrative. The relevant USED appropriations account (“Career, Technical, and Adult Education”) included \$2,181,436,000 in FY24 discretionary funds. One percent of that account would amount to \$21,814,360—nowhere close to the \$2,673,000,000 (in FY24 and FY25 funds) that will flow from USED to DOL pursuant to DOL’s new role under the IAA in dispersing these grants.

¹⁵ In the more recent IAAs, the Administration also points to its initial IAA regarding CTE and adult education as a second precedent for using IAAs to change which federal agency administers grant programs. The fact sheets refer to that agreement as having been “successfully implemented.” Because this legal analysis finds that the first IAA likely lacks legal footing, it cannot serve as a legal precedent for the other six.

Section II: *The Administration’s IAAs appear to exceed USED’s authority to reassign its functions to other agencies.*

To justify the IAAs announced thus far, the Administration cites in each IAA’s Section 2 (“AUTHORITY”) the following statutes: the Department of Education Organization Act (DEOA), the General Education Provisions Act (GEPA), and the Economy Act.¹⁶ However, neither these authorities’ plain language and purposes, historical usage, nor statutory context likely supports how the Administration is using these IAAs.¹⁷ The specific provisions cited by USED include:

Department of Education Organization Act

Two of the cited authorities are from DEOA (20 U.S.C. §§ 3401–3510) through which Congress established USED in 1979.¹⁸

First, **DEOA § 3475** provides a mechanism for entering into agreements with other agencies that can include advancing or reimbursing funds, “as the Secretary may determine necessary or appropriate to carry out functions of the Secretary or the Department”:

20 U.S.C. § 3475 - Contracts

(a) Authorization of Secretary

Subject to the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, the Secretary is authorized to make, enter into, and perform such contracts, grants, leases, cooperative agreements, or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and to make such payments, by way of advance or reimbursement, as the Secretary may determine necessary or appropriate to carry out functions of the Secretary or the Department.

Second, **DEOA § 3479** similarly speaks to the ability of USED to use another agency’s “services” and “facilities”¹⁹:

20 U.S.C. § 3479 - Use of Facilities

(a) Federal, State, local and foreign government facilities

With their consent, the Secretary may, with or without reimbursement, use the research, equipment,

¹⁶ The first IAA also cited a provision in WIOA that addresses the Secretary of Labor’s authority to enter into agreements. Subsequent IAAs do not include citations to similar program-specific statutes in their “Authority” sections related to the receiving agencies. Our analysis focuses primarily on the lawfulness of USED transferring functions and funds to other agencies rather than those agencies’ ability to receive them.

¹⁷ There does not appear to be significant case law about the outer limits of the authorities for IAAs, including DEOA, GEPA, and the Economy Act.

¹⁸ As explained in detail in the analysis below, DEOA grants the Secretary certain authority to reorganize USED internally but does not explicitly grant the Secretary authority to relocate functions to another agency, which would run counter to Congress’s intent in establishing USED and designating its functions and structures.

¹⁹ The Administration could argue that § 3479’s reference to “services” extends to management of core USED functions, although the context for this provision—“government facilities” including “research, equipment, services, and facilities”—would undermine the applicability of this authority for a major transfer of functions.

services, and facilities of any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any foreign government, in carrying out any function of the Secretary or the Department.

General Education Provisions Act

GEPA (20 U.S.C. §§ 1221–1235) includes a broad array of provisions governing USED’s programs and relating to the agency’s authorities and responsibilities. **GEPA § 1231** is cited in the IAAs and provides USED with the authority to enter into “joint funding” of programs with other agencies²⁰:

20 U.S.C. § 1231 - Joint funding of programs

(a) Joint Projects; Transfers of Appropriations; Contracts or Grants; Criteria

(1) The Secretary is authorized to enter into arrangements with other Federal agencies to jointly carry out projects of common interest, to transfer to such agencies funds appropriated under any applicable program, and to receive and use funds from such agencies, for projects of common interest.

The Economy Act

The Economy Act (31 U.S.C. § 1535) allows for any agency to “place an order...for goods or services” with another agency subject to some delineated requirements.²¹

§ 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if-

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

²⁰ Section 1231(c) limits these joint projects:

(c) Limitations on Joint Funding

The Secretary may not construe the provisions of this section to take precedence over a limitation on joint funding contained in an applicable statute.

Note that GEPA is an authorizing statute, not an appropriations law; it thus cannot serve as an exception to the § 512 prohibition discussed above.

²¹ The Secretary might argue that outsourcing traditional functions of USED to another agency is a form of placing an order for “services.” For a more typical use of the Economy Act, see this 2010 [agreement](#) between the National Endowment for the Humanities, Office of Inspector General, and the Treasury Inspector General, for the provision of legal services.

For the reasons discussed below, the IAAs appear to exceed these authorities and improperly reassign USED’s functions to other agencies.

1. The Administration is seeking to use statutory authorities to facilitate the closure of a federal agency, a major question that Congress did not address in enacting the IAAs’ cited authorities.

Although each IAA includes narrow programmatic rationales in its “PURPOSE/SCOPE” section and in USED’s accompanying fact sheets (see the table on pages 2–3), the scale and context of the IAAs indicate that they were developed and launched not to enhance functions of USED but as part of the Administration’s stated desire and related actions to eliminate the agency entirely. Indeed, the rollouts of the IAAs have been explicit in tying the IAAs to that overarching purpose. The first IAA’s “PURPOSE/SECTION” section cites directly to the President’s March executive order calling for the closure of USED: “This work also serves to ‘return authority over education to the States and local communities while ensuring the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely’ in accordance with Executive Order No. 14242 signed on March 20, 2025.”²²

As the Administration rolled out the six additional IAAs, it repeatedly focused on the IAAs as part of an effort to “[dismantle the Department of Education](#)” and “[break up the federal education bureaucracy and move closer to fulfilling \[President Trump’s\] promise to return education to the states.](#)” On the day after announcing the additional six IAAs, Secretary McMahon [stated](#), “What we are doing is proof of concept. In other words, we are taking some of the programs that are currently being handled at the Department of Education and moving them to different agencies.” Numerous other public statements support the conclusion that the primary motivation for the IAAs is to facilitate the closure of USED.

Yet none of the IAAs’ cited statutory authorities include language suggesting that Congress was granting the executive branch the authority to dismantle a federal agency or reassign its core functions or funds to other agencies in contravention of Congress’s authorizing and appropriating statutes. By interpreting these administrative provisions as providing such authority without express congressional authorization, USED’s approach raises questions under the U.S. Supreme Court’s [major questions doctrine](#). That doctrine requires Congress to “speak clearly if it wishes to assign to an agency decisions of vast ‘economic and political significance.’”²³ Here, USED is attempting to shift many of its core responsibilities assigned to it by Congress—including for elementary and secondary education, career and technical education, higher education, Indian education, and others—without any clear indication from Congress that it intended in DEOA, GEPA, or the Economy Act to vest the executive branch with the power to use IAAs to redistribute almost any congressional assignment of function and funds.

²² Interestingly, the more recent set of six IAAs do not include this cross-reference to the executive order in their “PURPOSE/SCOPE” sections.

²³ *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014).

2. These agreements far exceed the historical uses of IAAs.

The breadth of these IAAs’ scope goes far beyond USED’s previously established IAAs.²⁴ Generally, USED’s IAAs—like executive branch IAAs generally—set forth activities that other agencies will perform to support or assist *USED* in carrying out its functions. For example, typical IAAs [provide](#) USED with information that allows it to locate borrowers in default, or [allow](#) Free Application for Federal Student Aid (FAFSA) applicants to pre-populate their applications with their tax return information. Critically, in these IAAs, USED retains responsibility for *administering* the congressionally mandated functions themselves (in these examples, student loan repayment programs and FAFSA).

By contrast, the new IAAs grant four other federal agencies the responsibility for administering key USED functions. Section 3 (“PERFORMANCE”) lists the activities to be carried out by the receiving agency (e.g., DOL) and then lists the activities that the relevant sending office within USED will continue to perform. The first IAA assigned DOL responsibility for, among other things, “[a]dministration” of all formula grants, discretionary programs, and national activities funded by the Perkins Act and WIOA Title II; “[i]mplementation of programs and other initiatives” under both laws; “[e]xecution of monitoring visits” of discretionary program grantees; and “[m]onitoring of States’ drawdowns of funds.”

In the IAAs announced more recently, the responsibilities for the receiving agencies are described as the “[p]rovision of services supporting the administration of” each specific USED grant program (e.g., ESSA’s Title I or HEA’s TRIO programs).²⁵ Yet Section 4 (“FUNDING”) in the six IAAs makes clear that the receiving agencies “will make new awards and administer such grants for the duration of the agreement.” Further, the partner agencies are given full responsibility, without reservation, for monitoring grant recipients—including determining and ensuring compliance, and protecting against fraud, waste, and abuse—and for providing technical assistance to grant recipients.²⁶

²⁴ According to the [10/14/08 USED Departmental Directive](#) on interagency agreements, DEOA “provides the legal authority for most interagency agreements to which ED is a party, particularly those where ED is the buying agency. (USED is the “buying agency” in the seven IAAs.) Although the Directive includes the Economy Act among a list of “other statutes relevant to ED that provide authority for specific types of interactive agreements,” it notes that “[t]he Economy Act is the authority generally used by other agencies buying services from ED; **ED does not use this authority if the DEOA, GEPA, or other specific authority can be used**” (emphasis in original).

²⁵ The introductory language in the six IAAs appears to have been drafted to make the division of responsibilities seem less extreme in their delegation of USED’s functions than in the initial one. For example, DOL’s commitment in the first IAA “to carry out the following activities in coordination with [USED]” was replaced in the six IAAs with “to carry out the following activities in coordination **and subject to the supervision of [USED]**” (emphasis added). The added language is not, in our view, material to the legal analysis in this resource and is in fact contradicted by the specific provisions set forth in the IAAs.

²⁶ The IAAs include two catch-all provisions in their lists of USED’s continuing responsibilities: “[r]esolution of matters requiring the exercise of final and conclusive authority that has been assigned by statute to the Secretary of Education” and “[a]ll remaining activities [the sending office] is statutorily required to perform.” It is not clear, however, what these provisions are meant to encompass, given that the IAAs explicitly transfer to DOL, HHS, DOI, and the State Department functions and responsibilities statutorily assigned to USED. In any event, such vague provisions cannot on their own rebut the legal critiques of the IAA. To conclude otherwise would be to allow a fig leaf to cover violations of Congress’s clear mandate through DEOA and other authorizing statutes assigning other programs and functions to USED.

3. These agreements likely exceed Congress’s limitations on the Secretary of Education’s authority to delegate USED’s functions and to reorganize the agency.

The IAAs also conflict with express limitations Congress placed on the Secretary’s authority when it established USED via DEOA, including limits on delegating functions and on reorganizing the agency.

First, delegating core USED program administration and oversight to another agency is inconsistent with DEOA § 3475 and § 3479. Those provisions permit the Secretary to enter into interagency agreements or to use the services of another agency to help USED “carry out” its functions, but these sections of DEOA (as well as the cited provisions in GEPA and the Economy Act) must be read in conjunction with DEOA [§ 3472](#) (“Delegation of functions”), which places an important limitation on the breadth of § 3475 agreements by clarifying that the Secretary cannot delegate functions in ways that would “relieve the Secretary of responsibility for the administration of such functions.” In § 3472, Congress established:

*Except as otherwise provided in this chapter, the Secretary may delegate any function **to such officers and employees of the Department** as the Secretary may designate, and may authorize such successive redelegations of such functions **within the Department** as may be necessary or appropriate. **No delegation of functions by the Secretary under this section or under any other provision of this chapter shall relieve the Secretary of responsibility for the administration of such functions.** (Emphases added)*

In enacting this DEOA provision, Congress made clear that the Secretary of Education can delegate USED functions *within* USED. That this provision does not grant the Secretary the authority to delegate *beyond* USED is consistent with the reading that the Secretary *cannot* delegate “responsibility for the administration.”

Second, the Secretary’s authority to enter into agreements under DEOA § 3475 and § 3479 is also limited by § 3473, which establishes the extent to which the Secretary can alter certain USED offices or reallocate specific USED functions. In [§ 3473\(a\)](#), DEOA grants the Secretary the authority to:

*[A]llocate or reallocate functions **among the officers of the Department**, and to establish, consolidate, alter, or discontinue such organizational entities within the Department as may be necessary or appropriate (emphasis added).*

Here, § 3473 restates that the Secretary can only reallocate functions within USED and establishes that the Secretary has the authority to restructure USED. Section 3473 then explicitly excludes certain offices and functions from this authority, specifically:

*(1) **any office, bureau, unit, or other entity transferred to the Department and established by statute or any function vested by statute in such an entity or officer of such an entity**, except as provided in subsection (b); (2) **the abolition of organizational entities established by this Act**; or (3) **the alteration of the delegation of functions to any specific organizational entity required by this Act** (emphases added).*

In other words, although DEOA grants the Secretary the authority to reorganize USED offices or reallocate USED functions, it explicitly *prohibits* the Secretary from exercising that authority with respect to offices transferred from the former U.S. Department of Health, Education, and Welfare (HEW) and subsequently established within USED by statute, functions vested by statute in those offices, or functions that DEOA delegates to a specific USED entity.

By enacting DEOA, Congress [transferred](#) OCTAE, OESE, OPE, and OSERS from HEW and [established](#) them each as offices within the newly created USED. DEOA also established or transferred specific certain [functions](#) to the Secretary, including 20 U.S.C. § 3423c (assigning responsibility for administering Title VI, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) to the Office of Indian Education), 20 U.S.C. § 3441(a) (assigning responsibility for administering Title I, Part C of ESEA and Title IV, Part A, Subsection 5 of the Higher Education Act), and the Vocational Education Act of 1963, all of which are encompassed by the IAAs. Because these offices were both statutorily transferred to and established within USED, and because those functions were statutorily assigned to the Secretary, the Secretary lacks authority under § 3473 to alter those offices or reallocate those functions outside of USED.

Conclusion

The March executive order charged Secretary McMahon with taking “all necessary steps to facilitate the closure” of USED but only “to the maximum extent...permitted by law.” Our analysis is that the IAAs likely go beyond that boundary. The IAAs announced to date seek to transfer USED funds in ways that appear to violate the current appropriations law. They also likely exceed the scope of the Secretary’s authority that is available under the cited DEOA, GEPA, and Economy Act provisions and that is limited by other DEOA provisions.

Appendix: USED Grant Programs Affected by Interagency Agreements

The following are the grant programs implicated by each of the seven IAAs announced by USED to date.

Career and technical education & adult education programs from Office of Career, Technical, and Adult Education (OCTAE) to Department of Labor

Perkins Act Programs

- Career and Technical Education—Title I (Basic Grants to States)
- Career and Technical Education—National Programs

WIOA Title II Programs

- Adult Education—Basic Grants to States
- Adult Education—National Leadership Activities

K–12 programs from Office of Elementary and Secondary Education (OESE) to Department of Labor

Formula Programs

- Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies
- Title I, Part B: Improving Academic Achievement of the Disadvantaged—State Assessment Grants
- Title I, Part C: Education of Migratory Children
- Title I, Part D: Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent or At-Risk
- Title II, Part A: Supporting Effective Instruction State Grants
- Title III, Part A: English Language Acquisition State Grants
- Title IV, Part A, Student Support and Academic Enrichment (SSAE)
- Title IV, Part B 21st Century Community Learning Centers
- Title V Small, Rural School Achievement and Rural and Low-Income School Programs
- Impact Aid
- Education for Homeless Children and Youth
- Republic of Palau Grant
- Consolidated Grants to the Insular Areas

Competitive Programs

- Comprehensive Literacy State Development
- Innovative Approaches to Literacy
- Supporting Effective Educator Development
- Charter Schools Program
- Assistance for Arts Education
- Washington D.C. Scholarships for Opportunity and Results (SOAR) Act
- Ready to Learn Programming
- Teacher and School Leader Incentive
- Teacher Quality Partnership Grant
- American History and Civics
- Statewide Family Engagement Centers
- Promise Neighborhoods
- Magnet Schools Assistance Program
- Full-Service Community Schools

Higher education programs from Office of Postsecondary Education (OPE) & Office of Elementary and Secondary Education (OESE) to Department of Labor

OPE Programs

- TRIO
 - Upward Bound
 - Upward Bound Math and Science
 - Veterans Upward Bound
 - Talent Search
 - McNair Scholars Program
 - Student Support Services Program
 - Educational Opportunity Centers
 - Training Program for Federal TRIO Programs
- Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)
- Graduate Assistance in Areas of National Need (GAANN)
- Augustus F. Hawkins Center of Excellence
- Title III Part A Strengthening Institutions Program
- Title III Part B Strengthening Historically Black Colleges and Universities Program
- Master's Degree Programs at Historically Black Colleges and Universities Program
- Strengthening Historically Black Graduate Institutions (HBGI)
- Howard University
- Higher Education Emergency Relief Fund
- Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSID)
- Transition Programs for Students with Intellectual Disabilities Coordinating Center (TPSID-CC)
- Fund for the Improvement of Postsecondary Education (FIPSE)
- Higher Education Congressionally Funded Community Projects Program

OESE Programs

- College Assistance Migrant Program (CAMP)
- High School Equivalency Program (HEP)

International and foreign language education programs from Office of Postsecondary Education (OPE) to Department of State

- American Overseas Research Centers (AORC)
- Business and International Education (BIE) Program
- Centers for International Business Education (CIBE)
- Foreign Language and Area Studies (FLAS) Fellowships
- International Research and Studies (IRS) Program
- Language Resource Centers (LRC) Program
- National Resource Centers (NRC) Program
- Undergraduate International Studies and Foreign Language (UISFL) Program
- Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowships
- Fulbright-Hays Faculty Research Abroad (FRA) Fellowships
- Fulbright-Hays Group Projects Abroad (GPA) Program
- Fulbright-Hays Seminars Abroad Program

Indian education programs from OESE, OPE, OCTAE & Office of Special Education and Rehabilitative Services (OSERS) to Department of the Interior

OESE Grant Programs

- Indian Education Grants to LEAs
- Special Programs for Indian Children—Indian Education Professional Development Grant Program (PD)
- Special Programs for Indian Children—Demonstration Grants (DEMO)
- State Tribal Education Partnership Program (STEP)
- Native American and Alaska Native Language Program (NALED)
- Native American Language Resource Center Program (NALRC)
- Alaska Native Education Program (ANEP)
- Native Hawaiian Education Program (NHEP) and the Native Hawaiian Education Council
- Native American and Alaska Native Children in School (NAM) Program

OPE Programs

- American Indian Tribally Controlled Colleges and Universities authorized under Title III, Part A of the Higher Education Act, Section 316 and Part F of the Higher Education Act, Section 371
- Indian Education-related Research and Development Infrastructure Grant program components authorized under Title VII, Part B of the Higher Education Act

OCTAE Program

- Tribally Controlled Postsecondary Career and Technical Institutions Program

OSERS Programs

- American Indian Vocational Rehabilitation Services Program
- Continued support for IDEA Part D funding for Tribally controlled colleges and universities (TCCUs)

Child care support for parenting college students from Office of Postsecondary Education (OPE) to Department of Health and Human Services

- Child Care Access Means Parents in School (CCAMPIS)

Standards for medical schools from Office of Postsecondary Education (OPE) to Department of Health and Human Services

- National Committee on Foreign Medical Education and Accreditation (NCFMEA)