

EducationCounsel Alert for December 2, 2025

This EducationCounsel Alert shares updates about various recent actions by the federal government relevant to education, including:

1. [Treasury Seeks Input on OBBBA Education Tax Credit Program](#)
2. [Transfers of USED Programs to Other Agencies Challenged in Court](#)
3. [Northwestern University Settles with Trump Administration](#)
4. [Other Significant Updates](#)
5. [What's Coming Next?](#)

You can also find summaries and brief analysis of many other developments in our ongoing [Executive Actions Chart](#), which is continuously updated. All of our summaries and analysis of the Administration's executive actions are available in one place by [clicking here](#). Please note that these developments are sometimes changing rapidly, and *this Alert and all our materials are meant to provide general guidance and do not constitute specific legal advice.*

1. Treasury Seeks Input on OBBBA Education Tax Credit Program

On 11/25/25, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) [issued](#) a [request for comments](#) on the implementation of the new [education tax credit program](#) established under the One Big Beautiful Bill Act (OBBBA). **Comments are due by 12/26/25 and [can be submitted here](#).**

The new tax credit applies to individuals' contributions (up to \$1700 per year) to non-profit Scholarship Granting Organizations (SGOs) that fund scholarships for qualified educational expenses for eligible elementary and secondary students enrolled in a public, private, or religious school. Treasury's anticipated guidance and/or regulations are expected to shape how the program will operate in practice and may be a deciding factor for states debating whether to participate in the program.

Before initiating a formal rulemaking process for regulations, **Treasury announced that it also plans to issue non-binding guidance** "regarding issues...on which guidance is most quickly needed." This includes allowing states to submit "early in 2026" their intent to participate in the program because "potential SGOs may need sufficient time to prepare for the commencement of this new credit in 2027 and assurance that the State in which they are located will elect to participate."

The request for comments specifically seeks input on several issues relating to SGO requirements and the annual State certification process, including:

- *"A participating State's required annual certification of SGOs within the State that meet the statutory requirements to qualify as an SGO;*
- *Policies and procedures implemented by electing States to ensure that the required certification is accurate and complete;*
- *Issues involving single-State organizations, organizations that may fundraise and award scholarships in more than one State, and organizations operating under other fact patterns that may wish to qualify as SGOs; and*
- *SGOs' reporting and recordkeeping requirements."*

However, respondents may provide comments on any issues that they believe should be addressed in the forthcoming guidance or that should help inform Treasury's initial draft regulations.

Throughout the request for comments are statements that say: "The Treasury Department and the IRS anticipate that the forthcoming proposed regulations would..." and then include an articulation of the Administration's current plans for the forthcoming draft regulations. Among these anticipatory statements, a particularly significant one appears on page 8 and declares that:

"The Treasury Department and the IRS anticipate that the forthcoming proposed regulations would provide, consistent with § 25F(g)(1)(A), that the State list must include all organizations located in the State that have requested to be designated as an SGO and that meet the § 25F(c)(5) statutory requirements."

This approach would appear to restrict states' discretion in determining which SGOs appear on their annual list, so long as those organizations meet the few requirements set forth in OBBBA itself. Though not mentioned in this notice, other significant issues that could be addressed in regulations or guidance include, for example, how broadly or narrowly to interpret the list of allowable uses for the scholarships.

2. Transfers of USED Programs to Other Agencies Challenged in Court

The Administration has not published any further updates about its implementation of the six additional interagency agreements (IAAs) that shift responsibility for many of USED's grant programs to other federal agencies. See our [11/20/25 Alert](#) for detailed information about these IAAs, which affect 80 federal programs accounting for nearly \$34 billion in annual education funding.

However, on 11/25/25, plaintiffs in one of the lawsuits challenging the Administration's efforts to dismantle USED [announced](#) that they have filed an [amended complaint](#) that folds into their case both factual assertions and legal claims related to the IAAs, including that the IAAs both violate authorizing and appropriations statutes and exceed the Secretary's authority to delegate her responsibilities. This lawsuit, along with a consolidated suit brought by a group of states, is the same case that earlier this year reached the Supreme Court on the question of whether the USED reduction-in-force and office reorganization announced in March could proceed while the litigation continued (the Court said they could). Those lawsuits are in the discovery process and have not yet reached the point where parties might move for summary judgement. EducationCounsel is preparing an analysis of the IAAs and will circulate that shortly.

3. Northwestern University Settles with Trump Administration

On 11/28/25, Northwestern University, like [Cornell](#), [University of Virginia](#), [Columbia](#), and a few others, signed an [agreement](#) with the Trump Administration to settle civil rights investigations and restore terminated or frozen federal funding (totalling more than \$790 million according to [Northwestern](#)). Among other things, the Northwestern settlement included the following provisions:

- **Payments:** Northwestern will directly pay the federal government \$75 million over three years.
- **Student Conduct:** The agreement includes several provisions related to how Northwestern manages and responds to student conduct, including regarding alleged antisemitism. Northwestern agreed to terminate its "[Deering Meadow Agreement](#)," which led to the end of an encampment protest in the spring of 2024, and reverse any policies adopted pursuant to it. Further, the university must receive the "consent" of Assistant Attorney General Harmeet Dhillon of the Justice Department's Civil Rights Division before modifying any of its "policies and procedures" relating to "discrimination and

harassment” or “demonstration, protests, displays, and other expressive activities.” The university must also share with the United States the results of a new independent campus climate survey.

- **Liability & Compliance:** Northwestern “expressly denies liability” regarding the now-settled civil rights investigations. Northwestern’s compliance with the agreement will be overseen by a newly-formed “Special Committee of the University’s Board of Trustees,” not an outside monitor. Northwestern’s president will also “report” quarterly to AAG Dhillon on compliance, and the President and Chair of the Board of Trustees will also certify quarterly “under penalty of perjury” that Northwestern “has maintained and implemented policies and procedures as well as training programs to ensure material compliance with the Agreement.” The certification is focused on policies, procedures, and training rather than on certifying actual compliance with the Administration’s interpretation of civil rights laws. Northwestern has other reporting responsibilities as well.
- **Civil Rights Compliance:** The agreement contains several commitments to review and revise any programs and employment practices that may violate Title VI or Title IX, but the language refers to complying with “applicable laws” and not the DOJ’s recent guidance about DEI programs. That guidance, however, must be “incorporate[]d...as a training resource so long as [it] remains operative.” (See our Deep Dive, “[Misguidance](#),” for more information on the DOJ guidance.)
- **Admissions:** In its commitments to “merit-based admissions policies,” Northwestern agreed to eliminate any “proxies” for protected characteristics like race; the agreement does not define the term. Northwestern also agreed to provide the federal government with detailed admissions data, but may use its upcoming IPEDS data submission to satisfy this requirement moving forward. In the context of international student admissions, Northwestern committed to “ensure that international students are asked questions designed to elicit their reasons for wishing to study at Northwestern and in the United States. Northwestern will also develop training materials to socialize international students to the norms of a campus dedicated to free inquiry and open debate.”
- **Transgender Students and Medical Care:** Northwestern agreed to adopt President Trump’s [Executive Order](#)’s definitions of “sex,” “female,” “male,” “women,” and “men” and “uphold its commitment to Title IX by providing safe and fair opportunities for women, including single-sex housing for any woman, defined on the basis of sex, who requests such accommodations and all-female sports, locker rooms, and showering facilities.”¹ The agreement also forbids the medical school from “perform[ing] hormonal interventions and transgender surgeries” including “any other procedure intended to alter an individual’s sex characteristics” on patients under 18.
- **Academic Freedom:** “No provision of this Agreement, individually or taken together, shall be construed as giving the United States authority to dictate faculty hiring, University hiring, admission decisions, Northwestern’s curriculum, or the content of academic speech and research.”

¹ The agreement does not address federal court legal precedent in the Seventh Circuit, which covers Illinois where Northwestern is located. The U.S. Court of Appeals for the Seventh Circuit has previously ruled that prohibiting students from accessing restroom facilities that align with their gender identity violates Title IX. *See A.C. v. Metropolitan School District of Martinsville*, 75 F.4th 760 (7th Cir. 2023); *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034 (7th Cir. 2017). The same court, however, recently asked in a similar case whether the Supreme Court’s recent [Skremetti decision](#) requires a reversal of this position. Further, the Supreme Court is [hearing arguments](#) in January about transgender athletes’ right to compete on sports teams that align with their gender identity. It is unclear whether the Seventh Circuit will decide if *Skremetti* demands a change or revisit this question after the Supreme Court rules on the athletics question.

- **Future Investigations:** As with Cornell's, the Northwestern agreement affirms that any future compliance reviews or investigations will be conducted by the federal government "[c]onsistent with established procedural requirements."

4. Other Significant Updates

All recent updates appear in the [Executive Actions Chart](#), but some of note include:

Head Start Grants Update: Following the reopening of the federal government, the Office of Head Start has started issuing grants to Head Start agencies that begin their annual funding cycle on October 1, November 1, and December 1. Due to a technical issue, however, many of these programs have not yet been able to access these recently awarded funds. About two dozen programs closed during the government shutdown due to lack of funds. Some have reopened since the government shutdown ended, but [others](#) remain closed or have had to close while they wait for their funds to arrive. Even as programs receive their funds, retaining staff and child enrollment remain a challenge as some staff have found other jobs and some families enrolled in other programs during closures. (See our Deep Dive on the [shutdown's impacts on Head Start](#) for more on the challenges these programs face.)

USED Appoints New NACIQI Members: On 11/25/25, USED [announced](#) the appointment of five new members to the National Advisory Committee on Institutional Quality and Integrity (NACIQI), each of whom has been appointed to a six-year term. NACIQI recommends accreditors of higher education institutions for recognition by USED, and the Trump Administration has [shared](#) that it aims to [reform the accreditation system](#). The new appointees are:

- Robert Eitel, President of the Defense of Freedom Institute;
- Joshua Figueira, Deputy General Counsel and Managing Director of the Office of Compliance, Risk, and Legal Affairs at Brigham Young University–Idaho;
- Dr. Jay Greene, Senior Research Fellow for the Center of Education Policy at the Heritage Foundation;
- Dr. Steven Taylor, Policy Director and Senior Fellow in Economic Mobility at Stand Together Trust; and
- Emilee Reynolds, student at Western Carolina University.

In USED's announcement, U.S. Under Secretary of Education Nicholas Kent explicitly drew the connection between these appointees and the Administration's accreditation agenda, stating that he is confident "these appointees will help realign the accreditation system"—calling the current system "protectionist" and one that "overlook[s] poor student outcomes, contribute[s] to rising college costs and degree inflation, and prioritize[s] divisive DEI standards over the skills students need to compete in the next-generation workforce." The next NACIQI meeting is 12/16/25, and more information about that meeting is available [here](#).

States Sue over Restrictions on SNAP Eligibility: On 11/26/25, 22 states [sued](#) the Trump Administration regarding the U.S. Department of Agriculture's (USDA) 10/31/25 [memo](#) that excludes from Supplemental Nutrition Assistance Program (SNAP) eligibility those lawful permanent residents who previously held the status of refugees, asylees, or parolees. USDA issued the guidance as part of its implementation of the [SNAP provisions](#) in the One Big Beautiful Bill Act (OBBBA). The lawsuit was filed in the U.S. District Court for the District of Oregon and argues that the guidance is "contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act."

USED to Investigate UC Berkeley under the Clery Act: On 11/25/25, USED [announced](#) an investigation under the Clery Act into the University of California–Berkeley’s compliance with campus safety requirements because of the circumstances involving an on-campus protest against a Turning Points USA event on 11/10/25. USED’s Clery investigation follows an [announcement](#) by Attorney General Bondi on 11/11/25, regarding a separate investigation of the same protest by the Joint Terrorism Task Force into alleged involvement by Antifa to “intimidate Americans and suppress their free expression and First Amendment rights.” The UC system is already under significant pressure from the Trump Administration, including ongoing litigation over more than \$500 million in grant terminations (see our [11/20/24 Alert](#) for more on the recent preliminary injunction in that case). USED’s office of Federal Student Aid will lead the investigation and has requested wide-ranging documents to support an “audit trail” showing for 2022–2025 all incidents of crime, the university police department’s activity logs and daily crime logs, all Timely Warnings and Emergency Notifications issued by the university, and more.

DOJ Files Sixth Suit Against State Laws Granting Undocumented Students In-State Tuition: On 11/20/25, DOJ [announced](#) a lawsuit against California that challenges its laws permitting undocumented postsecondary students to qualify for in-state tuition, certain scholarships, and subsidized loans. The complaint asserts that provisions of the California Education Code and California Dream Act violate federal law, including by providing favorable treatment for undocumented students who meet the state’s residency requirements over American citizens residing in other states. This is the sixth suit of its kind brought under the Trump Administration (others include [Texas](#), [Kentucky](#), [Illinois](#), [Oklahoma](#), and [Minnesota](#)).

Relatedly, on 11/19/25, a federal judge [permitted](#) Kentucky Students for Affordable Tuition, represented by attorneys from the Mexican American Legal Defense and Educational Fund, to intervene in the litigation between Kentucky and the federal government in order to defend that state’s policies permitting undocumented students to qualify for in-state tuition.

5. What’s Coming Next?

Our [Executive Actions Tracker](#), which is different from our [Executive Actions Chart](#), includes a comprehensive list of specific actions called for in President Trump’s various EOs affecting education. The table below highlights a few particularly significant *upcoming deadlines*. Consult the Tracker for a full list of the EOs’ requirements and deadlines.

Executive Order	Date	Action Expected
“Ensuring Transparency in Higher Education Admissions” Memo	12/5	Directs the Secretary of Education, in coordination with NCES, to expand the scope of required reporting to provide “adequate transparency” into admissions, consistent with applicable law.
“Ensuring Continued Accountability In Federal Hiring” EO	12/14	Requires each agency to submit an Annual Staffing Plan “to ensure that new career appointments in the upcoming fiscal year are in the highest-need areas and aligned with the priorities of [the Trump] Administration.”

DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided above does not serve as legal counsel and, given the pace of action, could be outdated quickly. Nonetheless we hope this information is helpful. If you have any suggestions or feedback please send it to info@educationcounsel.com. Updates in this Alert are current as of December 2, 2025 at 9:00 am ET.