

EducationCounsel Alert for March 20, 2025

This EducationCounsel Alert provides a summary and brief analysis of President Trump's [new Executive Order](#) regarding the future of the U.S. Department of Education (USED).

SUMMARY: On 3/20/25, President Trump issued a brief Executive Order (EO) titled, "[Improving Education Outcomes by Empowering Parents, States, and Communities](#)" that directs the Secretary of Education:

"...to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education and 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."

The EO has a second substantive provision that charges Secretary McMahon with ensuring that recipients of federal education funds are in "rigorous compliance with Federal law and Administration policy." The EO specifically spotlights the need to "terminate illegal discrimination obscured under the label 'diversity, equity, and inclusion' or similar terms and programs promoting gender ideology."

ANALYSIS: This initial analysis of the EO and what might come next is in three parts, one for each of the major sections of the EO: the opening rationale, the primary section on closing USED, and the secondary section about not funding "diversity, equity, and inclusion" or "gender ideology."

1) Rationale: The EO opens with a five-paragraph "Purpose and Policy" section that, similar to all EOs, provides the context and rationale for the President's order. It repeats arguments that the President and others have made at various times, calling for USED's closure because, they [allege](#), it is a "bloated" bureaucracy, it has intruded on state and local control, and its existence is significantly responsible for shortfalls in student performance.

Yet it is worth noting that USED disperses about \$150 billion in grants each year with only 4,133 employees (now 2,183 after recent massive layoffs) making it relatively lean among federal agencies. Federal funding administered by USED accounts for only about 10% of the total our nation spends on K-12 education, and USED's staff makes relatively few decisions about what happens in schools, certainly compared to the authority wielded by state and local officials. Indeed, bipartisan majorities in Congress have [repeatedly forbidden](#) the federal government from interfering with or directing state and local decisions about curricula or programs of instruction. In a forthcoming "Deep Dive," we will further unpack the EO's stated rationales for calling for USED's elimination.

2) Closure: As to the primary section of the EO directing Secretary McMahon to "take all necessary steps to facilitate the closure of [USED]," it is critical to keep in mind that because USED was established by Congress and in several other laws, Congress has charged it with additional specific responsibilities. **Accordingly, only Congress can officially close USED.** Doing so would likely require overcoming the Senate filibuster, but the consensus view is that such a bill would *not* have the necessary 60 votes.

Most experts agree that an attempt to close USED via the **reconciliation process** (which is not subject to the 60 vote threshold) would *not* be viable, since it would violate the Senate’s “Byrd Rule” requiring that all reconciliation provisions have as their primary purpose increases or reductions in the budget. However, there is some possibility that Republicans in Congress might attempt to include closing USED in the reconciliation bills they are currently negotiating. It is worth noting that, immediately following the EO signing ceremony, Senator Bill Cassidy (R-LA), the Chairman of the Senate Health, Education, Labor, & Pensions (HELP) Committee, [pledged](#) to introduce a bill to eliminate USED “as soon as possible.” His bill would follow a [similar bill](#) introduced at the end of January in the House of Representatives by Congressman Thomas Massie (R-KY).

Aside from any congressional action to eliminate USED *in law*, the EO’s language—along with multiple statements by the [President](#), the [Secretary](#), and [others](#) in the Administration—signals that **the Administration plans to continue taking steps to hollow the agency out *in fact***. The recent, massive [reduction in force](#) (RIF) of about half of USED’s workforce represents a substantial reduction in the agency’s capacity and expertise, including more than half of the civil rights offices and almost all of the Institute of Education Sciences. At this point, we do not know the other specific steps the Secretary might take, but potential actions might include additional RIFs, elimination of more offices not established by statute, additional terminations or cancellations of grants and contracts, and efforts to move USED functions and funding streams to other federal agencies. In the EO and their post-RIF [public pronouncements](#), the Administration has pledged to “ensur[e] the effective and uninterrupted delivery of services, programs, and benefits” during and after their efforts to eliminate and/or hollow out USED. It is unclear if they can deliver on this pledge with greatly reduced staffing levels and additional disruptions that further hollowing out steps might cause.

There are already **multiple lawsuits** challenging the legality of last week’s RIF, and new suits are likely to be filed in the wake of today’s EO and/or as Secretary McMahon takes other steps to “facilitate the closure” of USED. This might include, for example, challenges to any attempts to transfer statutorily mandated responsibilities to other agencies or arguments that the hollowing out of the agency effectively eliminates it or leaves it unable to fulfill its congressionally-mandated responsibilities.

3) Funding “DEI” and “Gender Ideology”: Finally, with regard to the second part of the EO directing the Secretary to ensure that recipients of federal funds halt “illegal discrimination,” **this EO does not appear to introduce anything new beyond what has already been included in prior executive actions**. This includes the prior “anti-DEI” EOs ([here](#) and [here](#)), the “Ending Radical Indoctrination in K-12 Schooling” EO ([here](#)), the prior gender equity EOs ([here](#) and [here](#)), and recent guidance from the Office of Civil Rights (OCR) ([here](#) and [here](#)). Those EOs and guidance documents are already subject to multiple lawsuits. The Administration is nevertheless aggressively pursuing enforcement actions, most notably via [investigations](#) of 52 universities about allegations of race-based discrimination, [multiple investigations](#) (and even [funding penalties](#)) of K-12 and higher education systems for allowing transgender women to compete in women’s sports, and a [number](#) of [actions](#) against universities regarding their responses to antisemitism on campus.

We conclude with an observation about this part of the EO: as we have pointed out in [our analysis](#) of OCR’s Dear Colleague Letter and [our recent take](#) on OCR’s FAQs, neither EOs nor statements of the Administration’s policy preferences can change what is lawful. This includes what constitutes illegal

discrimination under Title VI of the Civil Rights Act of 1964. Nevertheless, the new EO demands “rigorous compliance” with both “Federal law” and “Administration policy.” It is that very conflation of settled law and untested policy that can lead to pre-emptive compliance or over-compliance in the field. We strongly recommend consulting your counsel before taking action to “rigorously comply” with something beyond the bounds of current law.

→ ***What does this mean for education?*** USED still stands, but the threat to close it has become significantly more real. Although official elimination of USED requires congressional action, it is clear that major changes are already underway, and more are likely coming, especially to the extent Secretary McMahon seeks to move some functions to other agencies. Educators and system/institutional leaders in early childhood, K-12, and higher education should continue to monitor and document the situation, especially if any federal services or resources are delayed or terminated.

Note that you can find information about this and many other developments in our ongoing [Executive Actions Chart](#), and you can access all of our resources related to the Administration’s executive actions affecting education at <https://tinyurl.com/EdCounselResources>.

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 March 20, 2025 at 8:00 pm EDT.