

Emerging Issues Update With AACRAO GR: Understanding How Recent Executive Orders Could Impact Higher Ed

February 21, 2025

Overview of Federal Issues

- Education Leadership
- Regulations
- Executive Orders
- Department of Education
- Reconciliation/Tax Cuts
- Other items

Education Leadership

- Senate HELP Committee
 - Chair: Bill Cassidy (R-LA)
 - Ranking Member: Bernie Sanders (D-VT)
- House Education and the Workforce
 - Chair: Tim Walberg (R-MI)
 - Ranking Member: Bobby Scott (D-VA)
- Department of Education
 - Secretary: Linda McMahon
 - Hearing February 13, 2025
 - Committee vote February 20, 2025
 - Undersecretary: Nicholas Kent
 - Career Education Colleges and Universities

Regulations

Gainful Employment/Financial Value Transparency (GE/FVT)

- February 18, 2025 deadline – Just moved to September 30, 2025
- Higher Education community had asked for more time
- Federal judge gave the Department of Education 90 days to file a response outlining its position on a set of regulations put in place by the Biden administration
- Department has until May 16, 2025 to respond

Regulations

- Distance Education
 - Will still allow for Asynchronous Distance Education Clock-Hour Programs
 - Will not mandate attendance taking in 100% distance education course
- Return to Title IV (R2T4)
- Trio Programs
- Court stay on Department of Labor overtime rule
 - Maintains \$35,500 threshold

Not Addressed in December 2024

- Cash Management
- State Authorization
- Accreditation

Executive Orders

- President Trump - 26 first day, 45 to date

Birthright Citizenship – In the courts

Immigration/ICE on campuses

- AACRAO/NACUA/President's Alliance – Conversations
- Rescinded protections for “sensitive areas,” like churches, hospitals, schools and college campuses, where immigration enforcement actions previously couldn't take place
- If there's a court order to search in a location, then a university administrator would have to open the door to ICE agents

Executive Orders

Immigration/ICE on campuses

- ICE can't enter private areas, like dorms or other nonpublic buildings, without a judicial warrant
- But an administrative warrant, more typically used for ICE searches, doesn't hold the same "legal force"
- This directive could impact institutions that enroll undocumented students, operate legal aid clinics, or offer in-state tuition to undocumented individuals
- Twenty-five (25) states currently offer in-state tuition for undocumented students. Possible movement in the states.
- More information and resources from AACRAO will be forthcoming

Executive Orders

Immigration/Visa Scrutiny

- The order directs the Departments of State and Homeland Security to ensure that applicants “do not bear hostile attitudes” toward U.S. institutions
- Tightens vetting for all visa applicants, including F-1 and J-1
- Aligns all policies and programs with an “America First” approach
- Could impact State Department-funded international exchange and study abroad programs

Executive Orders

FAFSA

- Removal of non-binary identity on FAFSA form

Title IX

- Return to guidance from 1st Trump administration - 2020
- Restroom based on biological sex
- Only recognizes two genders – male/female
- Does not recognize ‘gender identity’
- Due process ability for individuals accused of sexual assault, such as allowing them to cross-examine their accuser
- The regulations limit Title IX’s jurisdiction to incidents that take place on campus and more narrowly defines sexual harassment

Executive Orders

Title IX Name, Image, Likeness (NIL) Payments

- Payments to college athletes must be “proportionate” between a school's male and female athletes to comply with Title IX

Transgender

- Bans transgender women from participating in women’s sports
- Calls on the education secretary to prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women’s category, to compete with or against or to appear unclothed before males

Executive Orders

Antisemitism

- Directs Office for Civil Rights to reconsider closed investigations on ethnic and religious discrimination, encourage the Department of Justice to take action, and allow immigration officers to deport international student “sympathizers” who support anti-Semitic groups

DEI programs

- OCR has opened up investigations at 5 HE institutions
- The document instructs the department to provide guidance for colleges and universities on how to comply with the 2023 Supreme Court ruling against affirmative action

Executive Orders

- Designates all institutions that receive federal financial aid as subcontractors and says that as such, they “shall not consider race, color, sex, sexual preference, religion, or national origin” in their programs or hiring decisions.
- Commissions the department to conduct an investigation of up to nine colleges with endowments worth more than \$1 billion to scrutinize compliance.

Administration’s “[Dear Colleague](#)” letter

- Informs the higher education community of possible cuts to federal funding if they continue diversity, equity, and inclusion (DEI) programs. Institutions have 14 days (Feb. 28) to comply with this new directive from the administration.
- AACRAO Executive Director response - [Link](#)
- Higher Education response

Federal Review of Grants and Programs/Federal Freeze

Impoundment Control Act (ICA)

- Implemented in 1970s after Watergate
- Administration believes that ICA is unconstitutional
- Check and balances on the limits of the Executive Branch to reallocate funds approved by Congress
- Restricts and makes conditions on the President's ability to reallocate funds

Federal Review of Grants and Programs/Federal Freeze

- Goal is to override ICA
- Broaden the executive branch's power not to spend money that has been appropriated by Congress
- Not going away
- Department is intentionally seeking out a legal fight over impoundment with the hope that the Supreme Court will ultimately strike down the ICA

Director of OMB – Russell Vought

- Founder of Center for Renewing America
- Played critical role in Project 2025

Department of Education

- Department established in 1979
- Executive Order is expected to come out after confirmation
- Not clear if the administration has full authority
- FSA/Pell/OCR/FERPA/Trio Programs established by Congress
 - Thought is that this would need to be voted by Congress
 - Need to pass the House and also meet the 60 vote filibuster threshold in the Senate
 - A significant number of Republicans (60) did not support the legislation in the last Congress
- The goal is to diminish the footprint of the Department

Department of Education

- Shut down all functions of the agency that aren't written explicitly into statute or move certain functions to other agencies
- The order wouldn't directly abolish the agency but instead “directs the agency to begin to diminish itself”
- Direct the education Secretary to come up with a plan to break up the department
- In testimony, Ms. McMahon agreed that only Congress can get rid of the agency
- However, the administration can take other steps to make the agency a shell of itself, from cutting staff to stopping some programs

Reconciliation/Tax package

- Initial goal was to pass legislation by Memorial Day
- Endowment Tax Expansion from 1.4% to 14 %
- Tax Scholarship and Fellowship Income
- Repeal Biden's "SAVE" plan, streamline income-driven repayment plans
- Repeal borrower defense to repayment discharge regulations
- Repeal closed school discharge regulations
- Eliminate Nonprofit Status for Hospitals
- Eliminate the Home Mortgage Interest Deduction

College Cost Reduction Act (CCRA)

- Scored by CBO at a cost saving of \$180 billion over ten years
- Bypasses 60 vote filibuster Senate requirement. Only majority.

College Cost Reduction Act

- Some aspects of the CCRA that AACRAO considers positive for students and institutions are:
 - Includes reverse transfer
 - Doubles max Pell Grant for juniors and seniors who are on track to graduate on-time and are enrolled in bachelor's degree programs with a high ROI
 - Repeals gainful employment and financial value transparency regulations
 - Prevents interest from capitalizing on student loans
 - Simplifies student loan repayment process
 - Would require students to only pay back what they would have owed on a 10-year standard repayment plan.

College Cost Reduction Act

- Some aspects of the CCRA that AACRAO considers negative for students and institutions are:
 - Eliminates the Federal Supplemental Educational Opportunity (FSEO) Grant program
 - Eliminates PLUS loans for graduates students/parents
 - Changes overall need analysis formula with worrisome impacts for low-income students
 - Makes institutions responsible for loans that former students don't pay off
 - Repeals 90/10 rule that prohibits institutions from receiving 90% of their revenue from Title IV funding

College Cost Reduction Act

- Establishes loan caps - \$73k for undergraduate; \$100k for graduate and \$150k for professional
- Includes risk-sharing proposal. Under proposed formula 86% of institutions would be required to make an annual payment to the Department of Education
- Creates post-secondary student data system

Other Items

- Continuing resolution/Government shutdown – March 14, 2025
 - FY 2024-25 FY
- Debt Ceiling
- Budget Resolutions for FY 2025-26
 - Senate and House have different approaches
 - Senate moving forward with 2 bills 1) focuses on border and defense and 2) tax cuts
 - House would include tax cuts (4.7 trillion) & would look to cut 2-2.5 trillion in discretionary funds
- NIH indirect cost cap to 15%
 - ACE, APLU, AAU and R1s lawsuit

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