

President Trump Issues Executive Order Aimed at Closing the U.S. Department of Education

March 24, 2025

On Thursday, March 20, 2025, President Donald Trump issued a much-anticipated Executive Order directing the U.S. Secretary of Education to “facilitate the closure” of the U.S. Department of Education “to the maximum extent appropriate and permitted by law.”^[1]

The Department of Education was created pursuant to the Department of Education Organization Act of 1979 and many of the programs it administers are likewise inscribed in statute, such as the Higher Education Act of 1965. Congress’s authority to enact legislation establishing executive branch offices and determining their functions has long been recognized.^[2] These statutory authorities expressly obligate the Secretary of Education and subordinate officers to carry out “functions vested” in them.^[3]

It is far from clear that the President, acting unilaterally, can modify or transfer functions committed to the Department of Education by law, such as administration of the federal student loan program. The Secretary of Education herself conceded, during her Senate confirmation hearing, that fully eliminating the Department would require congressional action. Likewise unclear is the degree to which personnel dedicated to meeting statutorily mandated functions may be reduced or eliminated. Litigation brought by twenty-one state attorneys general in Massachusetts federal district court alleged that the Department’s previously announced reduction in force “incapacitates components of the Department responsible for performing functions mandated by statute, effectively nullifying those [statutory] mandates.”^[4]

In a White House Press Release issued the same day, the Secretary of Education emphasized that “[c]losing the Department does not mean cutting off funds for those who depend on them—we will continue to support...students with special needs, college student borrowers, and others who rely on essential programs.”

The Order highlights the Department’s management of an ever-increasing \$1.6 trillion dollar student loan portfolio. In 2010, the Student Aid and Fiscal Responsibility Act directed the Department of Education itself to issue federal loans to college and university students. This sweeping restructuring of federal student aid programs eliminated the sizeable role private commercial banks had played in the federal student loan process. The Order casts serious doubt on the efficacy of this policy change and raises the specter that the Administration will work to re-privatize the federal student loan-making process. In remarks made in the Oval Office on Friday, March 21st, President Trump indicated that responsibility for administering the federal student loan portfolio would be transferred to the U.S. Small Business Administration, an executive branch agency without any history

of handling federal student loans.

Sounding a now familiar theme, the Order also reiterates “rigorous” enforcement of federal anti-discrimination laws.

Significant changes to the Department of Education in the form of restructuring, downsizing, and potential transfer of its responsibilities, coupled with ongoing and likely further litigation will, in the near-term, create an uncertain picture and downstream impacts on institutions of higher education that merit close monitoring.

Should you have any questions about the impact of the Order or recent executive actions on your institution’s policies and practices, please contact Jennifer McLaughlin (jmclaughlin@cullenllp.com), Dina Vespia (dvespia@cullenllp.com), Deirdre Mitacek (dmitacek@cullenllp.com), Nicole Donatich (ndonatich@cullenllp.com), or Jordan Milite (jmilite@cullenllp.com).

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

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Footnotes

[1] See “Improving Education Outcomes by Empowering Parents, States, and Communities.”

[2] See *Myers v. United States*, 272 U.S. 52, 129 (1926) (“To Congress under its legislative power is given the establishment of offices, the determination of their functions and jurisdiction, the prescribing of reasonable and relevant qualifications and rules of eligibility of appointees, and the fixing of the term for which they are to be appointed and their compensation.”).

[3] See 20 U.S.C. 3412(g).

[4] Compl. ¶ 4, *State of New York, et al. v. Linda McMahon, et al.*, No. 1:25-cv-10601 (D. Ma. Mar 13, 2025).

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