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BEFORE THE

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**  
**SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS**  
**AND**  
**SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND ADMINISTRATIVE RULES**  
**U.S. HOUSE OF REPRESENTATIVES**

*Regulatory Reform Task Forces Check-In: Part II*

**November 14, 2017**

Good morning Chairman Palmer, Chairman Jordan, Ranking Member Demings, Ranking Member Krishnamoorthi, and members of the Subcommittees. I am Robert S. Eitel, Senior Counselor to the Secretary of Education. I appreciate the opportunity to testify today on the subject of the Department of Education’s progress implementing President Trump’s Executive Order (EO) 13771, *Reducing Regulation and Controlling Regulatory Costs*, and EO 13777, *Enforcing the Regulatory Reform Agenda*. I am delighted to present the work of the Department, under the leadership of Secretary DeVos, in the area of regulatory reform and to provide you with an update on the progress of the Department’s Regulatory Reform Task Force.

**Regulatory Reform Orders**

As you know, under EO 13771, unless prohibited by law, the Department must finalize at least two “deregulatory actions” (as defined in guidance issued by the Office of Management and Budget) for each new significant regulation that the Department publishes, beginning with fiscal year 2017 and by the end of each fiscal year thereafter. Moreover, unless prohibited by law, the Department must meet its regulatory cost allowance by sufficiently offsetting the incremental costs of new significant regulations with cost savings from deregulatory actions.

In order to “alleviate unnecessary regulatory burdens placed on the American people,” EO 13777 directs the appointment of a Regulatory Reform Officer and the establishment of a Regulatory Reform Task Force to oversee the implementation of the Department’s regulatory reform initiatives. Reporting periodically to the Secretary and regularly consulting with agency leadership, the Task Force for each agency must evaluate existing regulations and guidance and make recommendations to the Secretary regarding any repeal, replacement, or modification.

Consistent with applicable law, EO 13777 requires the Task Force to identify regulations that, among other things (1) eliminate jobs or inhibit job creation; (2) are outdated, unnecessary, or ineffective; (3) impose costs that exceed benefits; (4) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or (5) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

EO 13777 further directs the Department’s Task Force to seek input and other assistance from entities “significantly affected” by the agency’s regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations. When implementing the regulatory offsets required by the “two-for-one” EO 13771, EO 13777 also directs the Secretary to prioritize those regulations that the Task Force has identified as being outdated, unnecessary, or ineffective.

It is important to note that EO 12866 (issued in 1993), as amended, remains the primary governing EO regarding regulatory planning and review and that EO 13777 builds on EO 12866. Accordingly, as a general matter, departments and agencies must continue to analyze and consider costs and benefits of regulatory and deregulatory actions when making regulatory decisions and to issue regulations only upon a reasoned determination that the benefits justify costs.

With these Executive Orders in mind, regulatory review and reform are a top priority of Secretary DeVos. The Department holds the view that it should publish only regulations that are necessary. To that end, Secretary DeVos has directed that thoughtful deliberation, stakeholder engagement, and transparency serve as the guiding procedural principles of the Department's regulatory reform effort.

I will now explain what steps the Department has taken to comply with the EOs.

### **Department of Education's Regulatory Reform Task Force**

#### *Establishment of the Regulatory Reform Task Force*

On April 25, 2017, in accordance with Section 2 of the EO 13777, I was appointed the Department's Regulatory Reform Officer. On the same date, adhering to Section 3 of the Order, the Secretary appointed the Regulatory Reform Task Force, with Elizabeth McFadden, the Department's Regulatory Policy Officer (RPO), and me appointed as Co-Chairs of the Task Force. The Department's Regulatory Reform Task Force also includes representatives of the Department's central policy office (Office of Planning, Evaluation, and Policy Development) and its relevant Principal Offices (encompassing at least three senior agency officials).

Since May, the Department's Task Force has met at least once monthly. During this time, it has taken important steps to comply with EO 13777 that I set forth below.

#### *Actions by the Regulatory Reform Task Force*

The Department of Education's Task Force has embarked on a careful review of the Department's regulations and policy-centered significant guidance in an effort that involves political appointees and career civil servants and that has actively sought and received input from Department stakeholders and the general public.

As an initial step, the Task Force, working through each Principal Office of the Department, reviewed the Department's regulations and policy-oriented significant guidance, cataloging over 150 departmental regulations, ranging from matters of general applicability (the Department Seal, Service of Process, Freedom of Information Act, Privacy Act, and the like) to the privacy of education records (FERPA) to regulations implementing the Higher Education Act of 1965. The Task Force also identified 1,772 policy-oriented guidance documents across the Department, including Dear Colleague Letters, Questions and Answers or Frequently Asked Questions, policy memos, and the like, many of which were out of date. With this catalog of regulations and guidance in hand, the Task Force started its review and began the deliberations required by the EOs.

#### *Stakeholder Outreach by the Regulatory Reform Task Force*

To comply with the Order's requirement at Section 3(e) to seek input from the public, the Department sought comments from the general public and from specific stakeholders.

The Department published a [request for comments](#) in the *Federal Register* on June 22, inviting the public to provide comments on identifying regulations and guidance for repeal, replacement, or modification. After extending the comment period closing date from August 21 to September 20, the Department received over 16,300 comments from the public. The Department is currently reviewing these comments.

In addition to the Department-wide *Federal Register* notice seeking public comment, several Principal Offices have asked for the views of their specific stakeholders in a variety of ways. The method depended on the Principal Office.

To obtain the views of the postsecondary education community, the **Office of Postsecondary Education (OPE)** conducted hearings at Salt Lake Community College in Sandy,

Utah and at the Department on September 26 and October 4, respectively. The **Office of Career, Technical, and Adult Education (OCTAE)** attended the meeting of the National Coalition on Literacy on October 5, to seek views on adult education guidance and regulations that may merit repeal, replacement, or modification. On November 15, OCTAE's Division of Adult Education and Literacy will discuss regulatory reform with the State Directors of Adult Education at the National Adult Education Professional Development Consortium National Training Institute.

Similarly, with **Office of Elementary and Secondary Education (OESE)** leadership, the Secretary convened a listening session on October 2, with education policy leaders, who presented their individual views on the topic of regulatory relief for State educational agencies, local school districts, schools, teachers, and administrators. OESE also sent a letter to various elementary and secondary education groups on May 30, asking for their views. OESE has received comments from a range of groups, including the School Superintendents Association (AASA), the Cook Inlet Tribal Council, the Council of Chief State School Officers, the National Governors Association, and the National Alliance for Public Charter Schools.

The **Office of Innovation and Improvement (OII)** also consulted with the public in its review of Department regulations and guidance. OII's Office of Nonpublic Education met with the Council for American Private Education (CAPE), a coalition of 21 national organizations and 38 State affiliates serving private elementary and secondary schools and representing about 80 percent of private school enrollment nationwide. Similarly, on August 14, OII's Charter Schools Program (CSP) alerted charter schools, charter school authorizers, charter management organizations, charter support organizations, and other stakeholders about the opportunity to provide comments related to matters affecting charter schools. CSP also met with leaders from national organizations,

such as the National Association of Charter School Authorizers and the National Alliance for Public Charter Schools.

The **Office of Special Education and Rehabilitative Services (OSERS)** took a multi-faceted approach to solicit input from the public, including on-site meetings, teleconferences, blogs, newsletters, and conference presentations. Its Office of Special Education Programs hosted over a thousand people at its Annual Leadership Conference on July 17-19, and provided attendees three opportunities at the conference to provide feedback on the regulatory reform process. Representatives included State special education, early childhood special education, and early intervention leaders and parent leaders. On September 11, OSERS also conducted an on-site meeting with over 60 organizations representing parents, disability advocates, civil rights groups, and education associations to obtain their views on the Department's evaluation of regulations and guidance. During monthly and quarterly telephone calls, OSERS also alerted State Directors of Special Education, State Part C Coordinators for Early Intervention, and members of the Council of State Administrators of Vocational Rehabilitation to the opportunity to submit comments on regulatory reform at the Department. OSERS further convened a question-and-answer telephone conference with stakeholders on October 24.

Throughout the summer and fall, the **Office for Civil Rights** met with a diverse number of organizations, including the National Association of College and University Attorneys, the Thurgood Marshall College Fund, the Clery Center, and the National Disability Rights Network.

### *Identifying Deregulatory Actions*

**OPE** has identified two sets of regulations (Borrower Defense to Repayment and Gainful Employment) for review through negotiated rulemaking. This effort is ongoing, with OPE

convening negotiated rulemaking committee and subcommittee meetings until March of 2018 in these areas. Additionally, the Department, as explained in its Spring 2017 Unified Agenda of Federal Regulatory & Deregulatory Activity posted by OMB in July, plans to take other deregulatory actions that it is taking in the area of higher education.

In a similar vein, in the Spring Unified Agenda, **OESE** identified for withdrawal the Supplement-not-Supplant notice of proposed rulemaking under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, which was published in the Federal Register on September 16, 2016 (81 FR 61148). OESE also identified for withdrawal the regulations governing the Migrant Even Start Family Literacy Program; the Christa McAuliffe Fellowship Program; and the Selection Criteria for Empowerment Zone or Enterprise Community, as Congress has not reauthorized or extended these programs. The Department will be taking steps to rescind these out-of-date regulations in the coming months.

#### *Task Force Transparency*

The Task Force has published the foregoing information, together with extensive attachments, in two reports – a progress report dated May 25 and a status report dated October 18 -- that it has posted on its website for the public to review.

#### **Next Steps**

The Department of Education has made significant strides in implementing the Administration's regulatory reform agenda, and our work continues. The Department remains focused on alleviating regulatory burdens that impose costs greater than their benefits and that stifle innovation in education but will do so with awareness for concerns about taxpayer protection and educational quality and equity. Though it has not yet been finalized, , the Department, with input from its Regulatory Reform Task Force, has submitted to OMB its

portion of the Fall 2017 Unified Regulatory and Deregulatory Agenda and, as discussed earlier, the Department anticipates that the Unified Agenda will show additional plans for deregulatory efforts for Fiscal Year 2018.

The Task Force also plans to continue developing deregulatory recommendations for future action beyond the Fall 2017 Unified Agenda, including burdens imposed by regulations but also those caused by agency significant guidance documents, an area of intense concern to Secretary DeVos and the Administration. Although guidance is not legally binding, even non-binding guidance that is promulgated by the Department may result in action by and costs to the regulated entities. As with the Department's regulations, the Task Force will continue to examine guidance documents closely as part of its regulatory review and reform effort.

### **Conclusion**

Thank you again for the opportunity to discuss with you the work of the Department's Regulatory Reform Task Force. I would be pleased to answer any other questions you have about our regulatory reform work to date.

**Robert S. Eitel** serves as Senior Counselor to the Secretary of Education and Regulatory Reform Officer of the U.S. Department of Education. Immediately prior to joining the Department, Mr. Eitel was a vice president of regulatory legal compliance and a vice president of regulatory operations at Bridgepoint Education and Career Education Corporation, respectively. Mr. Eitel has also served as



Deputy General Counsel of the U.S. Department of Education and practiced law in New Orleans, Louisiana and Washington, D.C. He earned his A.B. from Georgetown University and his law degree from Tulane University Law School.

