

White House Issues Regulatory Freeze with Minimal Impact on Education & Rules

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On President Trump's first day in office, the White House ordered a regulatory freeze to allow the incoming administration to review any new or pending regulations. Federal agencies are required to take several steps to allow certain regulations to be reviewed and approved by a department or agency head appointed by President Trump prior to implementation. First, all new regulations must be reviewed and approved by a department head before publication in the Federal Register. In addition, all new regulations sent for publication in the Federal Register under the prior administration but not yet published must be immediately withdrawn for review and approval. This memorandum is consistent with those from prior administrations. See, for example, memos from the Clinton Administration, G.W. Bush Administration and Obama Administration.

Regulations published in the Federal Register before January 20 but not yet in effect will have their effective date temporarily postponed by 60 days (starting January 20) to allow time to review questions of fact, law and policy. The White House also suggests proposing an additional notice-and-comment rulemaking during the delay.

This freeze will likely not significantly impact the Department of Education's recent major rulemakings. The Gainful Employment rule and related guidance are already in effect, and therefore not subject to this freeze. Similarly, the Department's procedural Borrower Defense to Repayment (BDTR) rule took effective immediately upon publication last week. Though both the full package of BDTR rules and the State Authorization for Distance Education rules were published in 2016, the rules are not yet in effect because of the Department's Master Calendar requirement. Both rules have effective dates more than 60 days in the future. Thus, even if these rules could fall within the freeze order, the 60-day effective date postponement will not significantly impact their implementation.

Note also that the order appears to capture other guidance documents, such as Dear Colleague Letters. Such guidance will therefore need sign off from a department head appointed by the President before it can be implemented.

The fact that BDTR, Gainful Employment and other key rulemakings are not significantly impacted by this regulatory freeze does not prohibit Congress or the Trump Administration from taking other actions to review, modify or eliminate them.

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