

Trump Administration – Day One	Congress	Department of Education
<p>Repeal Obama’s Executive Orders</p> <ul style="list-style-type: none"> • Obama has issued 250 Executive Orders • Only two Executive Orders are related to higher education; both focus on improving performance at minority-serving institutions via the creation of advisory boards (one on HBCUs, one on Tribal Colleges) • Some notable Obama Executive Orders which could be on the chopping block: <ul style="list-style-type: none"> ○ Deferred Action for Childhood Arrivals (DACA) ○ Raising minimum wage and expanding LGBT protections for federal contractors ○ Climate change (Paris Agreement, EPA Clean Power Plan) ○ Gun control <p>Issue new Executive Orders</p> <ul style="list-style-type: none"> • The Trump Administration could issue a series of new Executive Orders which could undo many of the policy directives issued by the Obama Administration 	<p>Congressional Review Act</p> <ul style="list-style-type: none"> • Congress can strike down a final regulation issued by the Executive Branch within 60 “legislative” days of publication • Filibuster-proof in Senate and prevents the future publication of a rule “substantially the same” as the one overturned • Possible regulations affected: <ul style="list-style-type: none"> ○ Teacher preparation ○ Borrower Defense to Repayment ○ State authorization of distance education—if published. • A new presidential administration has additional window to act <p>Appropriations process</p> <ul style="list-style-type: none"> • Congress can use the appropriations process to defund enforcement of certain regulations • Current spending bill expires December 9 • Congress could act to defund enforcement now, or wait until later in the year when Trump assumes office • Possible defunded regulations: <ul style="list-style-type: none"> ○ State authorization ○ Definition of credit hour ○ Gainful employment ○ Teacher preparation • Budget reconciliation <p>Standalone legislation</p> <ul style="list-style-type: none"> • Congress can pass a standalone deregulation package, including a number of higher education regulations or be a part of HEA • Bill could be limited in scope to Department of Education, or include a raft of regulations from across the Executive Branch spectrum • Subject to Senate filibuster 	<p>Selective Enforcement</p> <ul style="list-style-type: none"> • The Department of Education could choose not to enforce some of its own previously-issued regulations <p>Pending Rules</p> <ul style="list-style-type: none"> • NPRM: could be withdrawn • Final Rule/Not Published: withdraw before official publication in Federal Register • Final/Not Effective: <ul style="list-style-type: none"> ○ Automatic 60 day delay ○ Re-open with 30 day comment period ○ Unclear what can be revised <p>Guidance</p> <ul style="list-style-type: none"> • The Department has the power to rewrite or reissue sub-regulatory guidance at any time <ul style="list-style-type: none"> ○ For example, the “preponderance of evidence” standard within Title IX was clarified via sub-regulatory guidance which could be revised or eliminated • New sub-regulatory guidance could be issued to “override” previous guidance <p>Renegotiation of current regulations</p> <ul style="list-style-type: none"> • If Congress deregulates, the Department of Education could be tasked with rewriting some of its existing regulations • The negotiated rulemaking process could be reopened and existing regulations rewritten to fit the vision of the new presidential administration