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Higher Education

Executive Order Requires Free Inquiry On College Campuses

On March 21, 2019, President Trump signed an Executive Order titled: “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities” (“the Order”). The purpose of the Order is to promote free and open debate on college campuses.

The Order charges federal agencies, specifically, the Departments of Defense, the Interior, Agriculture, Commerce, Labor, Health and Human Services, Transportation, Energy, and Education; the Environmental Protection Agency; the National Science Foundation; and the National Aeronautics and Space Administration, to work in coordination with the Office of Management and Budget to enforce and ensure compliance with the law.

The Order conditions receipt of federal research aid and education grants on colleges and universities promoting free inquiry on their campuses, which includes requiring public schools to uphold the First Amendment and private schools to uphold their institutional policies. Federal student aid is not tied to compliance with this Order. Unfortunately, the Order does not describe how the agencies will enforce the Order. This leaves a number of questions open regarding what legal principles the agencies will follow in determining whether or not to withhold federal aid.

The White House has stated that it will finalize the details about the Order’s implementation in coming months. Moreover, the President stated that this was only one in a series of steps it will take to protect students’ free speech on college campuses. This additional guidance will likely provide colleges and universities with more specific direction on what they will need to do to promote free inquiry on their campuses. For the time being, colleges and universities should evaluate their policies and practices in this area and determine whether the policies and practices—as written and as applied—are lawful. If they are lawful, colleges and universities must continue to enforce them on a consistent basis.

The Order also mandates additional responsibilities on the Secretary of Education to institute tools that will create more transparency in the costs and benefits of pursuing higher education. The Secretary is charged with expanding and updating annually the College Scorecard with program-level data for each certificate, degree, graduate, and professional program for former students who received Federal student aid. The data the Order specifically covers are estimated median earnings; median Stafford loan debt; median Graduate PLUS load debt (if applicable); median Parent PLUS loan debt; and student loan default rate and repayment rate. The Secretary must do the same on an institution-level with aggregate data for student loan default rate and repayment rate; Graduate PLUS default rate and repayment rate; and Parent PLUS default rate and repayment rate.

Michael Best is following further guidance from the White House on the implementation of this Order, as well as any other new laws or guidance related to promoting free speech on college campuses.

You can read the full text of the Order [here](#).

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