

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