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Federal Government Transition Update - 3.6.25 [1]

March 6, 2025 by Natalie Barry [2]

Dear Colleagues,

The following are recent federal activities of interest to CU's campuses and communities.

Department of Education

The U.S. Department of Education released new FAQs [3] on February 28 to supplement an Office of Civil Rights (OCR) February 14 Dear College Letter [4] (DCL). Overall, the FAQs are consistent with current law, with which we already comply. The new guidance clarifies some of the DCL, which broadly interprets the scope of the Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard (SFFA)*. For example, the FAQs clarify that campus educational, cultural and historical observances do not violate Title VI of the Civil Rights Act of 1964, so long as they are not exclusionary or discriminatory. The FAQs also confirm the process investigators will follow to determine whether universities are out of compliance with Title VI. This process will facilitate negotiations between universities and the Department before any proceedings are initiated that could put an institution's federal funding at risk. The national associations previously called on education officials to rescind the DCL in a series of letters, including a community letter [5] led by ACE, as well as individual letters from AAU [6] and APLU [7]. The American Federation of Teachers filed a lawsuit [8] last week challenging the DCL prior to the release of the FAQs. The American Civil Liberties Union and the National Education Association also filed a lawsuit challenging the DCL yesterday. It is unclear if the Department will release additional guidance on how it plans to implement the DCL on campuses.

Linda McMahon was confirmed Secretary of Education on Monday following a 51-45 party-line vote. That same day, McMahon gave a speech, "Our Department's Final Mission [9]," in which she promised to fulfill the President's campaign promise to unwind the U.S. Department of Education. In her remarks, McMahon acknowledged the necessity to partner with Congress since the Department is authorized in statute (P.L. 96-88 [10]). To be clear, abolishing the Department would require bipartisan congressional support and is therefore not expected. However, if the Department were closed, its responsibilities related to student aid, civil rights, Title IX, data collection, and more, would continue at other agencies.

Federal Workforce

The Office of Personnel Management (OPM) updated its guidance requiring federal agencies to determine if employees hired and promoted within the last 1-2 years should be retained. The revised guidance clarifies OPM "is not directing agencies to take any specific performance-based actions regarding probationary employees." It also says, "Agencies have ultimate decision-making authority over, and responsibility for, such personnel actions." This

position was echoed by the President in a Cabinet meeting this week, according to reporting from Politico. At the meeting, Cabinet secretaries were told they are responsible for “final decisions on personnel, policy, and pacing implementation” with DOGE playing an advisory role.

A federal judge issued a temporary restraining order last week pausing implementation of the OPM memorandum for covered federal agencies, including the National Science Foundation (NSF). Earlier this week NSF “reinstated all but two of the 86 full-time employees with probationary status it fired,” according to *Science* [11]. Hundreds of probationary employees were fired by the National Oceanic and Atmospheric Administration (NOAA) last week. The move was condemned by Assistant Minority Leader Neguse and Senators Bennet and Hickenlooper in a letter [12] to the Deputy Inspector General at the Department of Commerce. It is unclear whether NOAA or the other federal agencies who have fired their probationary employees will follow the NSF’s lead in rehiring them.

Additionally, 6,000 probationary workers at the U.S. Department of Agriculture (USDA), will be temporarily reinstated in their old positions following a ruling of the Merit Systems Protection Board today. Special counsel argued the mass layoffs were not in line with how the government can lawfully cut back their workforce.

Federal Funding Freeze

On March 6, a federal judge in the U.S. District Court of Rhode Island issued a preliminary injunction [13] barring the administration from freezing funds for federal programs, including research grants to universities, in a case brought forward by 22 states, including Colorado. In his ruling, the judge stated, the funding freeze "fundamentally undermines the distinct constitutional roles of each branch of our government." The U.S. District Court in D.C. also issued a preliminary injunction in a separate lawsuit on the funding freeze filed by nonprofits and small businesses. The Administration is expected to appeal the decisions.

National Institutes of Health (NIH) F&A

On March 5, a federal judge in the U.S. District Court of Massachusetts issued a nationwide preliminary injunction [14] to temporarily prohibit the NIH from imposing a standard facility and administrative (F&A) costs rate of 15 percent while the case is considered in the courts. The ruling was administered following three separate lawsuits from 22 State Attorneys General (including Colorado), the AAMC, and AAU in conjunction with ACE, APLU, and ten universities. While the three cases have not been consolidated, the judge considered them together. CU provided declarations of impact at the request of the Colorado Attorney General in the states’ lawsuit. The declarations explain the impact the proposed policy would have on biomedical research at the university and were cited in the court's ruling. Following the decision, AAMC [15] and ACE [16] issued statements in support of the preliminary injunction.

Additionally, on March 5, the Senate Health, Education, Labor, and Pensions (HELP) committee held its confirmation hearing for Dr. Jay Bhattacharya to serve as NIH director. During the hearing, Senator Hickenlooper highlighted the importance of F&A for Colorado institutions conducting NIH research. Senator Susan Collins (R-Maine), who also serves as chair of the Senate Appropriations Committee, discussed how NIH F&A rates need to continue to be independently negotiated by institutions, and emphasized the Appropriations Committee has for many years included language preventing administrations from

establishing a set F&A rate.

Gender Affirming Care

Following a lawsuit carried by the states of Washington, Colorado, Minnesota, and Oregon, on February 28, a U.S. District Judge in Washington state issued a preliminary injunction [17] which temporarily stops an Executive Order blocking federal funding to providers who provide gender affirming care. This injunction only applies to the four states who are part of the lawsuit. This ruling will allow CU's clinical partners at Children's Hospital of Colorado and Denver Health to continue their current policies [18] on delivering gender affirming care. CU supports our clinical partners in their efforts to ensure we are able to treat patients in Colorado in line with the latest federal guidelines.

USAID

On Wednesday, the Supreme Court [19]in a 5-4 vote, rejected an emergency appeal from the administration and ruled to re-instate the order of the U.S. District Court of D.C., which requires the Administration to release $2 billion in frozen foreign aid. The majority ruled that the lower court must "clarify what obligations the government must fulfill to ensure compliance with the temporary restraining order."

Termination of Teacher Preparation Grant

On March 6, eight states, including Colorado, filed a lawsuit in the U.S. District Court of Massachusetts challenging the termination of federal grants for teacher preparation programs. The grants aim to educate teachers to serve in high-need areas. CU Denver, a recipient of the grant, partnered with community colleges to address the teacher shortage in rural Colorado, and provided a declaration of the impact of termination at the request of the Colorado Attorney General. A similar lawsuit was also filed by three teacher preparation organizations in the U.S. District Court of Maryland on Monday.

President Trump's Joint Address of Congress

On March 4, President Trump addressed Congress in a joint session that lasted just short of two hours. His speech focused on the administration's actions during his first six weeks in office, including the work of DOGE, combatting illegal immigration, establishing tariffs on Mexico and Canada, and his plans to enforce reciprocal tariffs. He also expressed support for Ukraine and his goal to have Greenland become a U.S. territory. The President's stated legislative goals for the upcoming year include funding for: national defense, border security, and tax cuts. In his address, the President also called for repealing the CHIPS and Science Act of 2022, bipartisan legislation that paved the way for major federal investments in Colorado, including a federally designated Quantum Tech Hub and NSF Engine won in partnership with Wyoming. CU's partners at The Science Coalition issued a statement [20] of concern about repealing the law. CU's federal relations team will continue to educate congressional members on the importance of the CHIPS and Science Act to the university and Colorado.

We recognize the challenges and uncertainty on our campuses during this time of change at the national level. We assure you the Federal Relations and General Counsel teams are monitoring developments to keep you informed. We appreciate all that you do and will continue to do for CU, and together we will navigate these changes. Please know we are

here for you, and we are working closely with the President and Chancellors as well as the Colorado congressional delegation. We encourage you to contact your campus leadership with questions. Please visit the CU System Federal Transitions Update [21] page for up-to-date communications and federal memos.

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