

Financial Aid Administrator Frequently Asked Questions (FAQ)

Potential Elimination of the Department of Education and Its Impact on Federal Student Aid

NASFAA understands that financial aid administrators are receiving questions regarding proposals to dismantle or eliminate the U.S. Department of Education. This resource provides information based on current law (primarily the Higher Education Act of 1965) and legislative procedure to help you address these inquiries.

Can the President eliminate the Department of Education or federal student aid programs through an Executive Order alone?

No. An Executive Order (EO) alone cannot eliminate the Department of Education (ED) or the federal student aid programs authorized under Title IV of the Higher Education Act (HEA).

- **The Department of Education:** ED was established by Congress through the Department of Education Organization Act of 1979, which is now included in the Higher Education Act. Eliminating ED would require an act of Congress repealing or fundamentally altering this law.
- **Federal Student Aid Programs:** Programs like Pell Grants, Federal Direct Loans, Federal Work-Study, etc., are authorized and governed by the HEA, a federal law passed by Congress. Eliminating these programs requires Congress to repeal or significantly amend the HEA.
- **Executive Orders vs. Law:** Executive Orders cannot override existing federal statutes passed by Congress. While an administration can use EOs to direct *how* existing laws are implemented (within legal limits), they cannot abolish agencies or programs created by statute.

What is the process by which Congress could eliminate the Department of Education? What are the legislative hurdles?

Eliminating ED would require congressional action. Legislation would need to be passed by the House and Senate and signed by the President.

- **Legislative Requirements:** Congress would need to pass a law that does two things:
 - Formally repeals or amends HEA to dissolve ED and;
 - Addresses the statutory responsibilities currently assigned to the Secretary of Education and ED throughout the HEA, such as administering the federal student aid programs.
- **Senate Rules (The Filibuster):** Under current Senate rules, major legislation like this is typically subject to the filibuster. This means 60 votes are generally required in the Senate to proceed to a final vote on the bill. Currently, Republicans hold the majority with 53 seats, while the Democratic party has 47 seats (made up of 45 Democrats and 2 Independents).
 - The Senate *can* change its own rules, potentially lowering the 60-vote threshold to just a simple majority vote (51, or 50 plus the Vice President) — a politically explosive move sometimes referred to as the “nuclear option,” which has been invoked for judicial nominations. However, *unless the rules change*, getting 60 votes, which would require support from members of both parties, remains a high bar for eliminating a federal department.
- **History of Failed Attempts:** Various members have introduced legislation in Congress multiple times over the years proposing the elimination of ED, but these efforts have consistently failed to gain sufficient traction to be passed into law. In 2023, the House considered an amendment to a bill that sought to eliminate the department, but more than 60 Republican members joined Democrats in rejecting the effort.

What would happen to federal student aid programs if ED were “dismantled” or “abolished” without Congress rewriting the HEA?

This scenario would create significant legal and operational chaos.

- **The Law Still Stands:** The HEA explicitly assigns the responsibility for administering Title IV federal student aid programs to the Secretary of Education (see 20 U.S.C. § 1070(b), 20 U.S.C. § 1087a). That legal requirement would remain.
- **Who’s In Charge?:** Without ED and a legislative plan for transition, Title IV programs would still be legally authorized, but no federal agency would be clearly designated to manage them. This would include critical functions like processing the

FAFSA, disbursing funds (Pell, Direct Loans), overseeing loan servicers, managing repayment plans (including Income-Driven Repayment (IDR) plans and Public Service Loan Forgiveness (PSLF)), and ensuring institutional compliance.

- **Need for Reassignment:** With a dismantled ED and no legislation assigning duties to another agency, fulfilling the HEA's mandates would become practically impossible, potentially halting aid delivery and loan management. This would likely lead to lawsuits from students, borrowers, schools, and maybe even states, arguing the government was breaking the law by not administering the required programs.

Which specific federal student aid programs are established in the HEA and rely on ED for administration?

Title IV of the HEA legally requires ED to administer key financial aid programs, including the functions of the Office of Federal Student Aid (FSA) which handles the day-to-day administration of Title IV aid. Key programs include:

- Federal Pell Grants
- Federal Supplemental Educational Opportunity Grants (FSEOG)
- Teacher Education Assistance for College and Higher Education (TEACH) Grants
- William D. Ford Federal Direct Loan Program:
 - Direct Subsidized Loans
 - Direct Unsubsidized Loans
 - Direct PLUS Loans (for parents and graduate/professional students)
 - Direct Consolidation Loans
- Federal Work-Study (FWS)
- Public Service Loan Forgiveness (PSLF)
- Teacher Loan Forgiveness
- Income-Driven Repayment (IDR) Plans (as methods for managing Direct Loan repayment)

What about the Office of Federal Student Aid (FSA)? Could it be eliminated or significantly changed without Congress?

FSA is the unit within ED that handles the day-to-day administration of Title IV aid.

- **Elimination:** This could not happen without Congress. Since the administration of the Title IV programs is required by law, FSA can't just be wiped out unless Congress also eliminates or reassigns those underlying legal duties.
- **Restructuring/Weakening:** However, an administration *could* attempt to significantly alter FSA's operations through executive actions, regulatory changes, or budgetary decisions, potentially without direct congressional approval.

What would happen to existing federal regulations if the Department of Education was eliminated?

Who would issue future rules?

The fate of existing and future regulations under the HEA would be tied directly to *how* ED might be eliminated and what happens to the HEA itself.

- **Elimination Without Reassignment:** If Congress eliminated ED but didn't change the HEA or reassign its duties, existing regulations would be in legal limbo. They'd technically exist but lack an agency to enforce, interpret, or update them, causing confusion and likely lawsuits.
- **Elimination With Reassignment:** If Congress eliminated ED and amended the HEA to transfer duties to another federal agency, that agency would take over regulatory responsibility, potentially rewriting rules over time.
- **Elimination With Replacement:** If Congress eliminated ED and replaced the HEA entirely, existing regulations would become obsolete, and new ones would depend on the replacement law.

Could Title IV functions be moved to the Department of the Treasury, the Small Business Administration (SBA), or elsewhere?

As mentioned above, the HEA assigns Title IV administration to the Secretary of Education. While an administration could *propose* transferring these functions, doing so cleanly and legally would likely require Congress to amend the HEA to authorize another agency to take over these specific responsibilities. Simply ordering a transfer via EO without legislative backing would create legal uncertainty and operational hurdles.

Short of full elimination, what actions *could* an administration take to dismantle, weaken, or restructure ED/FSA and the federal student aid programs?

While eliminating ED or Title IV programs requires Congress, an administration can use its executive and administrative powers to make significant changes. Potential actions could include:

- **Budget Cuts:** While Congress ultimately sets funding levels for ED, the president can propose or enforce deep cuts to ED's budget, especially FSA's administrative funds. This could impact oversight, borrower support, FAFSA modernization, IT systems, and compliance efforts.
- **Regulatory Changes:** Using the rulemaking process to reduce the role of ED in administration and oversight.
- **Restructuring ED/FSA:** Reorganizing ED/FSA internally or redirecting resources.

Key Takeaways for Financial Aid Administrators

- **Congress Holds the Key:** Eliminating ED or the core federal student aid programs isn't possible by Executive Order alone; it requires an act of Congress, likely needing to clear a 60-vote hurdle in the Senate under current rules.
- **HEA Is the Foundation:** As long as the Higher Education Act is law, the federal student aid programs it created exist and must be administered by the federal government (currently ED).
- **Administrative Actions Matter:** Even without eliminating ED, an administration's decisions on budgets, regulations, and agency structure can significantly affect how effectively the aid programs operate.
- **Risk of Disruption:** Dismantling ED without a clear legislative plan addressing the HEA would likely cause significant disruptions for students, borrowers, and schools.

*Disclaimer: This information is based on **current federal law, legislative rules, and administrative structures**. Future legislative actions by Congress, changes to Senate rules, executive actions by an administration, legal challenges, or judicial rulings could change the landscape described here. NASFAA will continue to monitor developments and provide updates to members.*