

Will the Pendulum Swing Back? Perspectives on the New Administrations Guidance and Oversight and Related to Financial Responsibility

Michael Wherry, CPA
Director, McClintock & Associates, P.C.

Roger Swartzwelder, JD
Partner, Thompson Coburn, LLP



July 15-16, 2025

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Topics

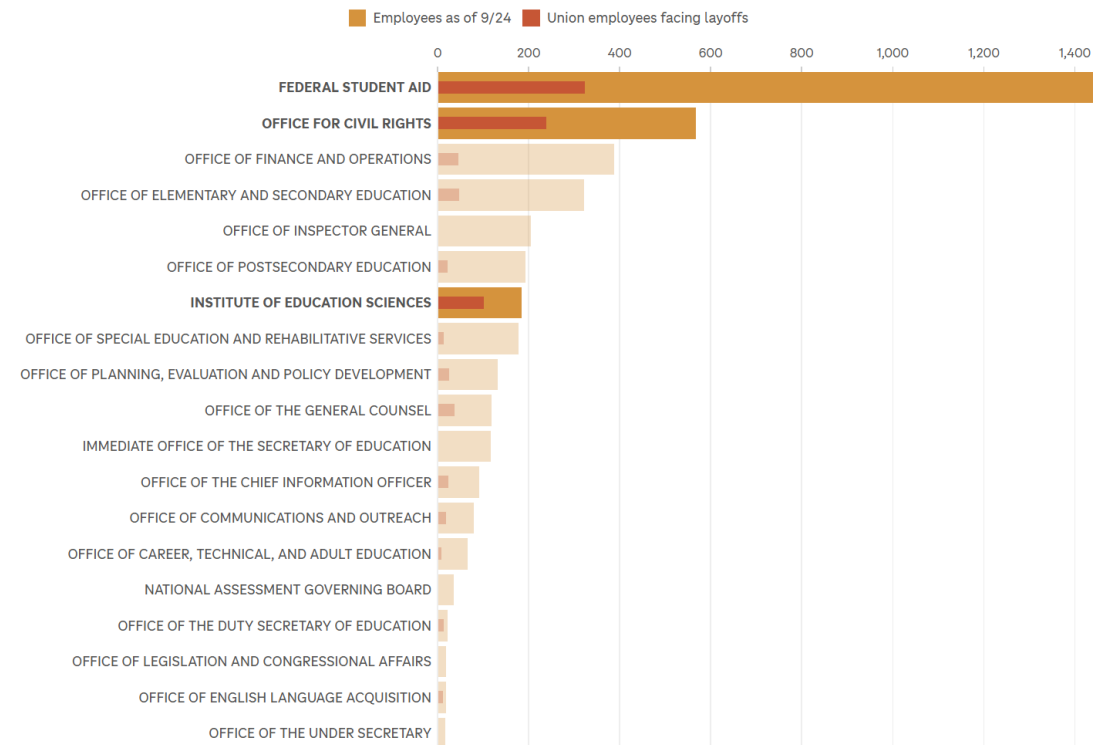
- State of ED Staffing & Rule Making
- Audited Financial Statements
- Composite Score Ratios
- 90/10 Changes
- Financial Triggers
- Change in Ownership

Diminished FSA Staffing and Impact

Education layoffs disproportionately target financial aid, civil rights and education research teams

The Trump administration announced it is cutting the U.S. Education Department's workforce by nearly half. The latest layoffs include more than 1,300 employees, among them roughly 1,000 union members.

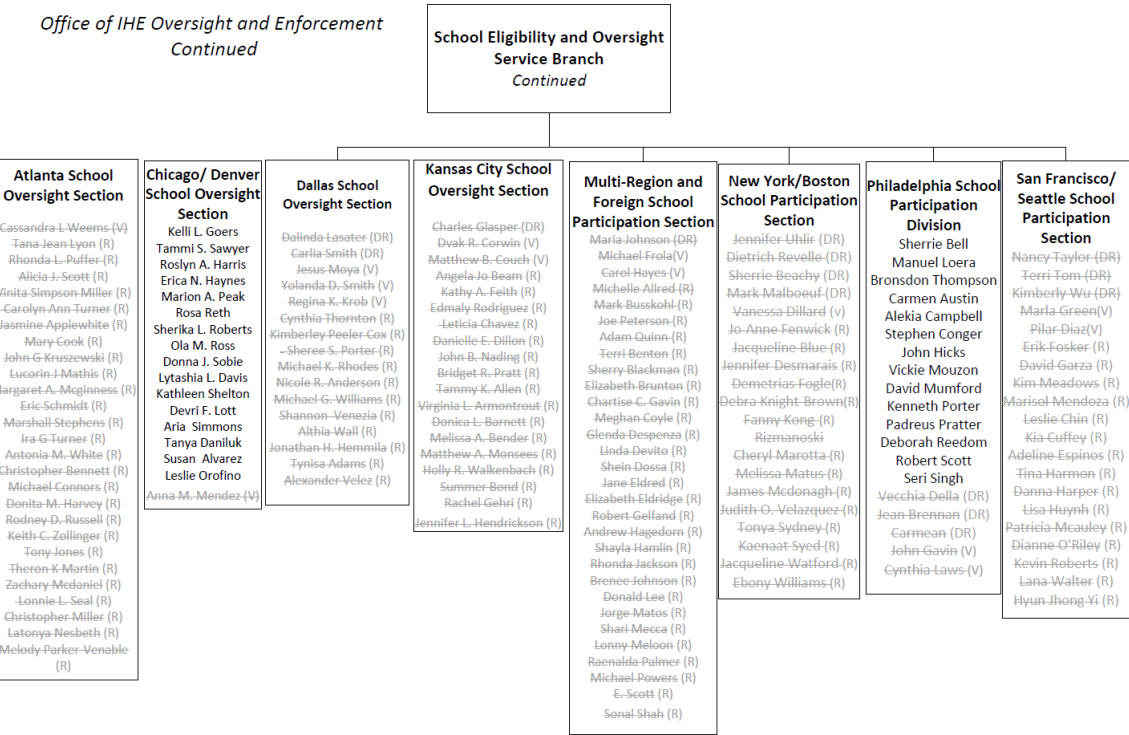
- March 11, 2025, nearly 50% reduction-in-force across ED.
- Largest proportional impacts on FSA, OCR and research units.
- School Eligibility and Oversight branch incurred the majority of FSA's layoffs (approx. 85% cut).



Source: Education Department data, FedScope Employment Cube (September 2024)

Credit: Stephen Fowler/NPR

Diminished FSA Staffing and Impact



Diminished FSA Staffing and Impact

- Nationwide injunction impact
- Kent confirmation hearing
- Lawsuit to rehire personnel
 - RIF and dismantling of ED have been enjoined
 - Administration appealed to Supreme Court, with ruling expected any day
- Operational delays
 - Approval of Title IV aid for a new location (school on PPPA from CIO) – lost \$180K in Pell due to e-App issue – issue for over 6 weeks
 - Initial Title IV school told that it was approved in February 2025 – still does not have a PPA

Audited Financial Statement and Audit Requirements

- Both audited financial statements and Title IV compliance audits must be submitted to ED by the earlier of 30 days after the completion of the audit or six months following the institution's fiscal year end.
- Rejections of audits for corrective action plans and prior year response to findings which are missing emails, letterhead or phone numbers – pass with deficiency (OIG Desk Reviews)
- Related party transaction disclosure (see next slide)
- Some eZ-Audit access issues – Test login well in advance of submission
- Change of year end requirement for school with different book and tax year ends – schools have updated in eZ-Audit and ED has asked for proof of tax year end – no guidance yet from ED on stub audit requirements
- 2024 Final Audit Determination Letter (FADL) received but 2023 FADL never received

Disclosures of Related Party Transactions

- FAQ guidance (last updated January 30, 2025)
 - Statements must include a detailed description of related entities to include all related parties and a level of detail that would enable ED to readily identify the related party.
 - Must disclose related party and location, the bank account(s) name, the total debits and credits for the fiscal year, with an account description.
 - Disclosure is required if an off-balance sheet related party transaction that has yet to mature, or if a balance sheet receivable or payable has not been realized.
 - ED may require financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by ED.

Composite Score

- No current ED communication on restatement of scores
 - Special projects related to bond issuances
 - Requirements of usage of funds by bond underwriters
 - Struggles post-Covid due to grant funding termination (PPP, ERC, HEERF)
- Deferred tax asset
- Dear Colleague Letter GEN-24-11 (December 20, 2024)

Dear Colleague Letter GEN-24-11 (December 20, 2024)

- Long-Term Debt Used for Property, Plant, and Equipment (PPE) -- Treatment of Non-bond and Bond Indebtedness, and Treatment of Leases (revising prior guidance from 2020).
 - If pre-implementation long-term debt is refinanced and produces even \$1 of proceeds (i.e., exceeding the outstanding balance of the pre-existing long-term debt), the refinanced debt is not qualified to offset pre-implementation PP&E used in the composite score calculation.
 - If the proceeds are used for the acquisition of post-implementation PP&E, those proceeds would qualify as post-implementation long-term debt up to the book value of the newly acquired PP&E.

Dear Colleague Letter GEN-24-11 (December 20, 2024) (continued)

- For credit facilities, any debt payments in the FY of implementation or later FYs is first applied to the beginning balance of pre-implementation debt until the total amount of pre-implementation debt is zero.
- Any payments after the pre-implementation debt is zero, should be applied first to the oldest balance of eligible post-implementation debt associated with PP&E and subsequent years of eligible post-implementation debt associated with PP&E until those balances are also zero.
- Any new draws on the credit facility in the fiscal year of implementation and future fiscal years is considered new post-implementation debt.
- Additional guidance on Construction in Progress (CIP).
- Also revised guidance on treatment of Bond Indebtedness – 4 scenarios (new or refinanced, restricted or unrestricted use of proceeds)

90/10

- OBBB – Did not eliminate the regulation
- eZ-Audit – Some rejections of reports due to ED requesting more detail on outside scholarships and employer payments – inconsistent and immaterial
- Regulatory relief issued
 - Eliminated preamble language restricting use of distance education for non-T4 programs and terminology around additional and unapproved locations – deemed procedurally deficient
 - Interpretive rules – Don't have effective dates and thus institutions can revise past calculations for completed fiscal years – Need ED guidance on this process

Financial Responsibility Triggers

- Reporting has occurred
 - Dividends, default on loans, accreditor required program teach out agreement, 90/10 failure
 - Limited response from ED
- Engage regulatory counsel – varying interpretation of requirement to report

Mandatory Financial Responsibility Triggers

- Certain legal and regulatory agency judgments and settlements.
- Certain lawsuits by governmental authorities and qui tam actions where the DOJ intervenes.
- Borrower Defense to Repayment (BDR) recoveries of specified impact on the composite score (as calculated retroactively).
- Certain withdrawals of equity.
- Contributions and distributions whose respective timing causes FYE composite score to be temporarily above 1.0.
- Failing GE programs related to 50% or more of Title IV funds.

Mandatory Financial Responsibility Triggers

- Failure of 90/10 in a single fiscal year.
- Cohort Default Rates above 30% in two most recent years for which rates are calculated.
- Required to submit teach-out plans or agreements to any agency due to financial viability concerns.
- Adverse credit agreement events/provisions tied to ED action.
- Declaration of financial exigency.
- Receivership.
- Certain SEC actions (for public companies).

Discretionary Financial Responsibility Triggers

- Probation, show-cause, or a comparable status with accreditor or state authorizing agency.
- Citation by state licensing or authorizing agency of non-compliance that could lead to termination of licensure/authorization.
- Various credit agreement matters, including if the school could be subject to default if not in compliance with ED requirements.
- “Significant fluctuation” in Title IV receipts.
- “High” annual drop-out rates.

Discretionary Financial Responsibility Triggers

- Required to submit teach-out plans or agreements to any agency (for reasons not covered by the mandatory trigger).
- Discontinuing programs that enroll more than 25% of students.
- Closing locations that enroll more than 25% of students.
- For institutions required to submit ongoing financial reporting to ED, such submissions reflect negative cash flows, failure of other financial ratios, cash flows that significantly miss projections, or other indicators of a significant changes in financial condition.

Discretionary Financial Responsibility Triggers

- Losses and threatened losses of education assistance funds from other federal agencies.
- Public company disclosures regarding investigations for possible violations of state, federal or foreign law.
- ED initiates a group claim process under the 2022 Borrower Defense regulations [although note: these are presently enjoined and likely blocked by OBBB].
- Any other event or condition that ED determines is likely to have a “significant adverse effect” on the school’s financial condition.

Reporting of Financial Responsibility Trigger Events

- Regulations generally require reporting within 21 days of the triggering event (except for 90/10 failure, which is 45 days following FYE).
- Electronic Announcement GEN-24-80 (June 27, 2024) outlines reporting requirements.
- Reporting method revised from prior generic ED email address to both:
 - COD Document Center
 - FSAFinancialAnalysisDivision@ed.gov (in specified email format)

Changes in Ownership

- Continued delays in ED's approval and review
- One client had to submit FYE financials 6 months after CIO and not 12/31 as CIO was close to year end
- Questions on level of ownership to submit
- Reminder that need 2 most recent FYE audits and 90-day notice to students / ED pre-closing
- Audits must be GAAP and GAGAS

Financial Responsibility for Changes in Ownership

- “New Owner LCs”
 - At least 25% of the institution’s prior year Title IV volume if the new owner does not have two fiscal years of acceptable audited financial statements.
 - At least 10% of the institution’s prior year Title IV volume if the new owner has only one fiscal year of acceptable audited financial statements.
- Additional (cumulative) LCs when Same Day Balance Sheet does not meet:
 - Acid test ratio of 1:1
 - Positive tangible net worth

Financial Responsibility for Changes in Ownership

- As deemed necessary in ED's discretion, financial protection equal to an additional 10% of the institution's prior year Title IV volume, or such larger amount as determined by ED.
 - Includes consideration of whether institution's cash flow can service debt obligations, both ongoing and any balloon payments.
- If any entity in the new ownership structure holds a 50% or greater direct or indirect voting or equity interest other institutions:
 - Required financial protection may be based on a percentage of the prior year Title IV volume for all institutions under common ownership.

Financial Responsibility for Changes in Ownership

- ED may also base LC determinations for CIOs, in part, on the institution's pre-transaction condition and whether it has:
 - Operating losses in either or both of its two latest fiscal years that in sum result in a decrease in tangible net worth in excess of 10 percent of the institution's tangible net worth at the beginning of the first year of the two-year period;
 - For its two most recent fiscal years, a positive tangible net worth; and
 - Passing composite score and meets the other financial responsibility requirements of 34 CFR 668 subpart L for its most recently completed fiscal year.

Contact Information

- Michael Wherry, CPA
Director, McClintock & Associates, P.C.
mwherry@mcclintockcpa.com
(412) 257-3680
- Roger Swartzwelder, Esq.
Partner, Thompson Coburn, LLP
rswartzwelder@thompsoncoburn.com
(202) 585-6918



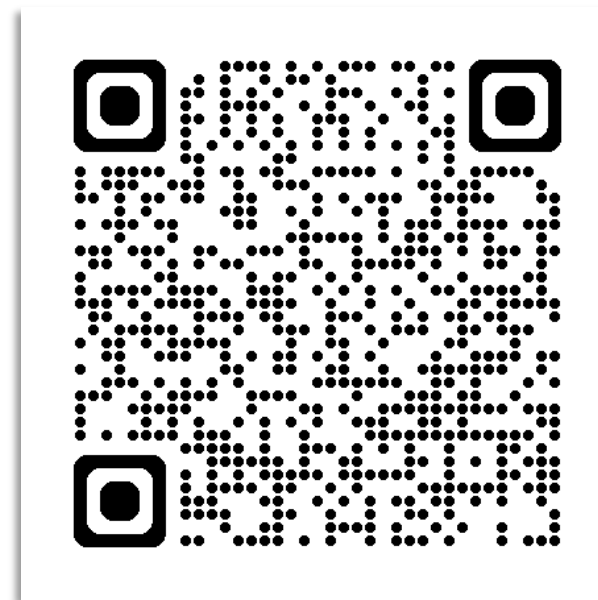
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