

## Questions for Robert Eitel

Senior Counselor  
Office of the Secretary  
Department of Education

*Questions from Ranking Member Raja Krishnamoorthi  
Subcommittee on Healthcare, Benefits, and Administrative Rules  
Committee on Oversight and Government Reform*

---

1. *What is the process by which recommendations of the Regulatory Reform Task Force ("RRTF") become law? Please identify the names and positions of senior career officials or political appointees at each stage of that process.*

The RRTF does not perform a law-making function. Rather, the RRTF seeks to leverage the skills, experience, and expertise of career and non-career employees to make recommendations to the Secretary for possible elimination or modification of ED regulations and guidance. If the Secretary decides to implement RRTF recommendations, she adheres to applicable law, including the Administrative Procedure Act where appropriate, to modify or rescind guidance or regulations.

The majority of the members of the RRTF are senior officials in those Principal Offices within ED that are responsible for the development and issuance of regulations and policy guidance. The composition of the RRTF is in accordance with Section 3 of Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, issued on February 25, 2017, which directs each agency to establish a Regulatory Reform Task Force composed of the agency Regulatory Reform Officer, the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866, a representative from the agency's central policy office or equivalent central office (in this case, the Office of Planning, Evaluation, and Policy Development (OPEPD)), and at least three additional senior agency officials as determined by the agency head. To that end, the following persons were designated to serve on the RRTF: Robert S. Eitel, RRO, Senior Counselor to the Secretary; Elizabeth McFadden, RPO, Deputy General Counsel, Office of the General Counsel (OGC); Hilary Malawer, Assistant General Counsel, Division of Regulatory Services, OGC; Jennifer Bell-Ellwanger, Acting Assistant Secretary, Director, Policy and Program Studies Service, OPEPD; Ebony Lee, Deputy Chief of Staff for Policy; Joseph Conaty, Senior Policy Advisor, Delegated to Perform the Duties of the Deputy Secretary; Kim R. Ford, Acting Assistant Secretary, Deputy Assistant Secretary, Office of Career Technical and Adult Education; Holly Ham, then Assistant Secretary for Management; Margo Anderson, Acting Assistant Secretary, Associate Assistant Deputy Secretary, Office of Innovation and Improvement; Jim Manning, Acting Under Secretary, Senior Advisor to the Under Secretary; Lynn Mahaffie, Deputy Assistant Secretary, Office of Postsecondary Education; Jason Botel, Acting Assistant Secretary, Principal Deputy Assistant Secretary, Office of Elementary and Secondary Education; Candice Jackson, Acting Assistant Secretary, Deputy Assistant Secretary for Strategic Operations and Outreach, Office for Civil Rights; Ruth Ryder, Deputy Director, Special Education Programs, Office of Special Education and Rehabilitative Services; and Jose Viana, Assistant Deputy Secretary and Director, Office of English Language Acquisition.

2. *The October 2017 report of the RRTF noted that the Department has received 16,391 comments from the public on regulatory policies and is currently reviewing these comments. When does the Department anticipate concluding its review of these comments? When will the Department make public all of those comments?*

Principal Offices in the Department are reviewing the comments that concern their regulations and guidance and hope to conclude that review by April 30, 2018. The comments are currently publicly available on regulations.gov.

3. *Under the so-called "two-for-one order" of Executive Order 13771, the Department faces the requirement "that for every one new regulation issued, at least two prior regulations be identified for elimination." Which specific actions does the RRTF and the Department consider to fulfill this requirement? For instance, would withdrawal of guidance, delays of effective dates, or announcements of future rulemaking fulfill the requirement?*

The Department continues to review its planned deregulatory and regulatory actions for purposes of compliance with Executive Order 13771, including the "two-for-one" requirement, and in accordance with the Office of Management and Budget's guidance on the Executive Order. Our current planned deregulatory actions are listed in the Department's Fall 2017 Unified Agenda of Federal Regulatory and Deregulatory Actions available on reginfo.gov.

4. *When will the RRTF make public details, including agendas and minutes, of meetings with stakeholders regarding the decisions to repeal, replace, or modify guidance and regulations?*

The RRTF has not conducted task force meetings as a group with stakeholders. As stated in our publicly released progress reports dated May 25, 2017, and October 18, 2017, Principal Offices in the Department with responsibility for regulations and guidance have conducted outreach to stakeholders and other members of the public relevant to those offices' areas of responsibility. With reference to minutes, please reference the following:

OCFO conducted outreach through a grantee-wide communication that was posted to the G5 webpage for all ED grantees on October 24, 2017.

A transcript of OSERS Oct 24, 2017 stakeholder meeting is available at:

<https://www2.ed.gov/policy/speced/reg/eo13777/transcript-stakeholder-conference-call-10-24-2017.pdf>

Transcripts of the public hearings on postsecondary education are available at:

<https://www2.ed.gov/policy/highered/reg/reform/2017/index.html>

*As co-chair of the Department's RRTF, you are responsible for reviewing regulations that are characterized to "impose costs that exceed benefits" and make recommendations to the Secretary regarding any repeal, replacement, or modification of regulations meeting that threshold.*

5. *Please provide a copy of any formal or informal analysis of regulations related to determining whether they impose costs that exceed benefits, including any specific formulas or metrics of analysis to quantify the benefits provided by the regulations.*

Each Principal Office with responsibility for regulations and guidance is represented on the RRTF, and through its representative on the RRTF is conducting the review required by EO 13777. These reviews are being conducted in accordance with the factors listed in Section 3(d) of Executive Order 13777 and, as indicated previously, are currently under way.

*The October 2017 report of the RRTF noted that "as previously discussed, OPE [Office of Post-Secondary Education] has identified two sets of regulations (Borrower Defense to Repayment/Financial Responsibility and Gainful Employment) for review through negotiated rulemaking. ..."*

6. *What role did the RRTF play in OPE's identification of these two regulations for review?*

I am voluntarily recused from matters relating to the Gainful Employment regulations and cannot answer this portion of the question. The RRTF did not play a direct role in the decision to commence negotiated rulemaking to amend the Borrower Defense to Repayment regulations.

*The October 2017 report of the RRTF also noted that, "[a]dditionally, the Department proposed two OPE deregulatory actions (delaying the Borrower Defense regulations) in its spring 2017 Unified Agenda of Federal Regulatory & Deregulatory Activity that OMB published on or about July 7, 2017."*

7. *What was the RRTF's involvement with the Department's decision to consider delaying of provisions of the borrower defense regulations, including any verbal or written votes, opinions, or positions taken by the RRTF on this matter?*

Upon the advice of the Office of the General Counsel, I cannot answer this question given that the Department's decision to delay the Borrower Defense to Repayment regulations is the subject of currently pending litigation.

8. *Please provide a copy of the RRTF's recommendations regarding provisions of the gainful employment regulations, including any verbal or written votes, opinions, or positions taken by the RRTF on this matter.*

I am voluntarily recused from matters relating to the Gainful Employment regulations and cannot answer this question.

*In a letter dated October 31, 2017 to United States Senator Patty Murray, the U.S. Department of Education's Inspector General, Kathleen S. Tighe, noted that the Office of Inspector General (OIG) supports regulations to protect students and taxpayers from waste fraud and abuse, including provisions of the borrower defense and gainful employment rules. The letter noted that "the regulations included changes that the OIG had previously recommended to the Department and Congress based on our audit and investigation work; the broad regulatory framework that had previously existed had made it nearly impossible in some cases for the Department to take administrative action based on issues we had identified." The Inspector General further noted that "we disagreed with certain delays of the gainful employment regulations" and that "we disagreed with the regulatory delay" of borrower defense rules.*

9. *Did the RRTF consult with Inspector General Tigue regarding these regulations, including any determinations the RRTF made regarding whether these rules were "unnecessary" or "impose costs that exceed benefits"?*

I am voluntarily recused from matters relating to the Gainful Employment regulations and cannot answer this portion of the question. Upon the advice of the Office of the General Counsel, I cannot answer the portion of the question as it relates to the Borrower Defense to Repayment regulations given that the Department's decision to delay those regulations is the subject of currently pending litigation.

10. *What is the RRTF's policy on consulting with OIG regarding positions it has taken in the past or may take in the future regarding any repeal, replacement, or modification of Department rules?*

The RRTF welcomes input from OIG and will seriously consider its recommendations.

11. *The Office of Federal Student Aid ("FSA") is not referred to in the RRTF reports as a "Principal Office." Does the RRTF consider FSA to be a "Principal Office" and if not, why not?*

FSA is a Principal Office within the Department but, consistent with section 141(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1018(b)(1)), FSA does not have responsibility for the development and promulgation of policy and regulations relating to the student aid programs. That authority rests with the Secretary and is delegated to the Office of Postsecondary Education.

*The October 2017 report of the RRTF noted that "several Principal Offices have asked for the views of the stakeholders especially relevant to their offices in a variety of ways" and the May 2017 report of the RRTF said that "the Office for Civil Rights ["OCR"] also plans to conduct public outreach sessions during the summer of 2017." It is our understanding that OCR has also held non-public meetings, in addition to public outreach sessions, to inform the Department's regulatory reform efforts.*

12. *Please provide the topic of each public outreach session and non-public meeting, groups or individuals that the Office for Civil Rights met with during these outreach sessions and meetings, and the specific times during which those meetings occurred.*

Throughout the summer and fall of 2017, the Office for Civil Rights (OCR) held non-public listening sessions and stakeholder meetings with the below-listed organizations. The topic of each meeting pertained to various OCR regulations, guidance documents, and general civil rights topics, including Title IX (sexual violence, LGBT issues, equity in athletics), disability rights, and Title VI (racial discrimination).

AAAED (American Association for Access Equity and Diversity) (9/21/17)  
AASCU (American Association of State Colleges and Universities) (6/14/17; 9/27/17)  
AAU (Association of American Universities) (5/30/17)  
ADF (Alliance Defending Freedom) (6/8/17)  
AEI (American Enterprise Institute) (5/18/17; 6/7/17; 6/29/17)  
APLU (Association of Public and Land-grant Universities) (6/9/17)  
ASCA (American School Counselor Association) (7/28/17)  
Atlanta Women for Equality (8/16/17)

AUCD (Association of University Centers on Disabilities) (8/15/17)  
Bazelon Center for Mental Health Law (8/15/17)  
CCCU (Council of Christian Colleges & Universities) (7/17/17; 9/20/17)  
The Clery Center (10/16/17)  
COPAA (Council of Parent Attorneys and Advocates) (8/15/17)  
COSA (Council of School Attorneys) (4/25/17)  
Educators4Excellence (11/8/17)  
Empowering Victims (6/13/17)  
End Violence Against Women International (11/3/17)  
EROC (End Rape on Campus) (6/21/17; 7/24/17; 8/4/17; 9/22/17)  
FACE (Families Advocating for Campus Equality) (5/24/17; 6/1/17; 7/13/17; 7/19/17; 9/15/17; 10/3/17)  
FIRE (Foundation for Individual Rights in Education) (6/1/17; 6/6/17; 6/8/17)  
Girls Inc. (5/30/17)  
GLSEN (6/16/17)  
Know Your IX (8/11/17)  
LCCHR (The Leadership Conference on Civil and Human Rights) (8/15/17)  
Log Cabin Republicans (6/16/17)  
National Alliance to End Sexual Violence (8/11/17)  
NACCOP (National Association of Clery Compliance Officers and Professionals) (9/8/17; 10/20/17)  
NACSA (National Association of Campus Safety Administrators) (9/25/17)  
NACUA (National Association of College and University Attorneys) (5/15/17; 6/1/17; 6/12/17; 6/21/17; 7/11/17; 7/24/17; 7/27/17; 8/11/17; 8/30/17; 10/2/17)  
NASPA (National Association of Student Personnel Administrators) (11/16/17)  
NBCSL (National Black Caucus of State Legislators) (6/14/17)  
NCAA (11/17/17)  
NCLD (National Center for Learning Disabilities) (8/15/17)  
NCTE (National Center for Transgender Equality) (6/16/17)  
NDRN (National Disability Rights Network) (8/15/17)  
NIC (North American Interfraternity Conference) (7/25/17; 11/14/17)  
NPC (National Panhellenic Conference) (7/25/17; 11/14/17)  
NSBA (National School Boards Association) (4/25/17)  
NWCA (National Wrestling Coaches of America) (11/17/17)  
National Wrestling Coaches Association (11/17/17)  
NWLC (National Women's Law Center) (6/13/17; 6/29/17)  
RAINN (Rape, Abuse, and Incest National Network) (7/6/17; 7/25/17; 9/15/17)  
SAVE (Stop Abusive and Violent Environments) (7/13/17; 9/29/17; 11/15/17)  
Students Advocating for Students (7/10/17)  
Students Against H.B. 51 (7/31/17)  
SurvJustice (7/7/17; 7/12/17; 7/24/17; 8/4/17; 9/22/17)  
Thomas B. Fordham Institute (6/29/17; 11/17/17)  
TMCF (Thurgood Marshall College Fund) (6/23/17; 10/23/17)  
TrainED (7/31/17; 11/6/17)  
USCCB (United States Conference of Catholic Bishops) (8/21/17)  
VRLC (Victim Rights Law Center) (9/27/17)  
Women Leaders in College Sports (11/17/17)

In addition, OCR officials attended and reviewed transcripts of the public hearings sponsored by the Department on September 26, 2017 (in Salt Lake City, UT) and October 4, 2017 (in Washington, DC), where members of the public gave comments to the Department about the Department's regulations under review.

13. *On what specific topics or regulations has the Office for Civil Rights sought or received feedback during their outreach sessions related to the work of the RRTF?*

OCR has sought and received feedback concerning its regulations and guidance generally. Specifically, OCR has received feedback on Title IX regulations (found at 34 CFR 106), Title IX policy guidance documents (including the September 22, 2017 Dear Colleague Letter withdrawing statements of policy; the September 22, 2017 Questions and Answers re Sexual Misconduct; the February 22, 2017 Dear Colleague Letter withdrawing the Dear Colleague Letter on Transgender Students; the April 20, 2010 Dear Colleague Letter: Guidance on Accommodating Students' Athletic Interests and Abilities; the January 2001 Dear Colleague Letter: Revised Sexual Harassment Guidance), the Title VI Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline dated January 8, 2014, and the December 28, 2016 disability rights guidance package (Dear Colleague Letter on Rights of Students with Disabilities in Public Charter Schools; Dear Colleague Letter on the Use of Restraint and Seclusion in Schools; Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools).

14. *What was the RRTF's role in providing any verbal or written feedback on matters relating to the now-rescinded Dear Colleague Letter on Sexual Violence dated April 4, 2011, and the Questions and Answers on Title IX Sexual Violence dated April 29, 2014?*

The RRTF did not play a role in the Department's decision to rescind on September 22, 2017, the April 4, 2011, Dear Colleague Letter and the Questions and Answers on Title IX dated April 29, 2014.

*As a member of the RRTF, Candice Jackson, Acting Assistant Secretary (OCR), and Deputy Assistant Secretary for Strategic Operations and Outreach, serves alongside you.*

15. *Has Ms. Jackson participated in soliciting or receiving stakeholder feedback for the Office for Civil Rights to inform the work of the RRTF?*

Yes.

16. *In conducting the cost benefit analysis for guidance and regulations overseen by the Office of Special Education and Rehabilitative Services ("OSERS"), how was protecting students' civil rights under the ADA considered? Please describe the methodology used and how these factors weighed into the consideration to rescind guidance and regulations.*

The Office of Special Education and Rehabilitative Services (OSERS) is not responsible for enforcing the Americans with Disabilities Act. As such, OSERS has no guidance or regulations that implement the ADA.

17. *In conducting the cost benefit analysis for guidance and regulations overseen by OSERS, how was access to a free, appropriate education in the least restrictive environment considered? Please describe the methodology used and how these factors weighed into the consideration to rescind guidance and regulations.*

The Office of Special Education and Rehabilitative Services (OSERS) rescinded on October 20, 2017, 72 non-regulatory guidance documents. OSERS did not conduct a cost benefit analysis of any of these guidance documents because the rescinded documents were outdated and had no benefit or effect on the services provided to children or individuals with disabilities.

18. *Separate from the current negotiating rulemaking on Borrower Defense regulations, were you involved between February 13, 2017 and April 5, 2017 in any way in matters relating to the Borrower Defense Regulations finalized in November 2016?*

During the time period when I was on an unpaid leave of absence from my then employer (from February 13 to April 5, 2017), I discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). I could do so because review of the borrower defense regulations is not a particular matter involving specific parties or a particular matter of general applicability, and I was so advised by the Designated Agency Ethics Official (DAEO). I take seriously my ethical obligations and have meticulously followed the ethics guidance that I have received from the Department's Office of the General Counsel.

- a. *If yes, please describe in detail the nature of your involvement.*

Please refer to my response to Question 18.

19. *Please describe in detail your reasons for voluntarily recusing yourself from matters related to the Gainful Employment rule.*

I raised the question with the DAEO as to whether I should recuse myself from consideration of the Gainful Employment regulation; I decided to recuse myself on that issue regardless of whether the ethics rules required such a recusal.

20. *Why did you not voluntarily recuse yourself from matters relating to Borrower Defense regulations?*

The Borrower Defense to Repayment regulation affects all Title IV eligible institutions and all borrowers. Please also refer to my response to Question 18.

## Questions for Robert Eitel

Senior Counselor  
Office of the Secretary  
Department of Education

### *Questions from Representative Mark DeSaulnier (CA-11) Committee on Oversight and Government Reform*

---

*I am concerned about individuals who were defrauded by for-profit colleges after taking out tens of thousands of dollars in loans. These students were promised a quality education, but instead they received subpar instruction, and in some cases none at all.*

*Over 87,000 students have filed claims accusing for-profit colleges of making false claims to attract unsuspecting students. However, the Obama Administration put in place several regulations to help these students. One such rule is the Gainful Employment Rule, which would shut down for-profit programs if their students couldn't afford to pay their student loans after graduating. Unfortunately, the Trump Administration has been systematically working to undermine these protections for defrauded students.*

*Considering this coordinated effort, below are specific questions we would like answers to:*

- 1. Have schools that have been sued for selling valueless diplomas benefited from the Trump Administration's suspension of the Gainful Employment Rule data collection requirement?*

*As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.*

- 2. Please provide your analysis that suggests that this rule will be effective when the Department of Education is prevented from collecting data.*

*As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.*

- 3. Is the Department of Education planning on officially repealing the Gainful Employment Rule outright?*

*As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.*

- 4. Has the task force discussed a replacement regulation for the Gainful Employment Rule? If so, can you share what is in the replacement?*

*As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.*

*I also understand that you were at one point employed by Bridgepoint Education, a for-profit college. That connection brings up a second, equally concerning series of questions:*

- 1. Is it true that you were still employed by Bridgepoint Education while also employed by the Department of Education?*



I was employed on a temporary basis at the Department while on an unpaid leave of absence from my then employer, Bridgepoint Education. I stepped down from that position when I took a permanent position with the Department. I received ethics advice from the Department's Office of the General Counsel that I have followed and upon which I have relied. I have gone above and beyond my ethics obligations, not only in voluntarily recusing myself from matters relating to the Gainful Employment regulation but also by recusing myself from any Borrower Defense claims filed by any students from any school (not just those filed against my prior employers).

2. *If so, were you concurrently employed by Bridgepoint Education while you were working on issues related to eliminating regulations surrounding for-profit colleges, including but not limited to the Borrower Defense Rule?*

During the time period when I was on an unpaid leave of absence from my then employer (from February 13 to April 5, 2017), I discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). I could do so because review of the Borrower Defense regulations is not a particular matter involving specific parties or a particular matter of general applicability, and I was so advised by the Department's DAEO. I take seriously my ethical obligations and have meticulously followed the ethics guidance that I have received from the Department's Office of the General Counsel. I also refer you to my response in Question 1.

3. *If so, please detail which efforts on which you were working.*

I refer you to my response to Questions 1 and 2.

4. *Please provide any documentation in which you reported any conflicts of interest and share the steps you have taken to address those conflicts or recuse yourself from particular decisions.*

As evidenced by my public financial disclosure report and pursuant to the Ethics Pledge, I am disqualified from working on matters involving American Academy for Liberal Education, Bridgepoint Education Inc., Career Education Corporation, and Boy Scouts of America Troop 888. In addition, I am subject to a statutory disqualification from working on matters involving Boy Scouts of America Troop 888. Please also refer to my response to Questions 1 and 2.

To further answer this question, I began working at the Department of Education on a temporary basis on February 13, 2017, while on a disclosed, unpaid leave of absence from my then employer, Bridgepoint. Before I arrived at the Department, I reached out to the Department's DAEO to get her advice on any potential ethics issues, including how to handle taking a temporary position at the Department. I was advised by the DAEO that the ethics laws would not preclude me from working at the Department on a temporary basis while on a leave of absence. Upon arrival at the Department, I received the standard ethics briefing from the DAEO and also met with her separately to again review the general ethics laws. These meetings occurred in February 2017.

I later contacted the DAEO to inform her of a potential conflict with regard to specific borrower defense claims by students attending institutions for which I was employed during the two year period prior to February 13, 2017 (two years before coming to the Department). I was advised that, while I was disqualified from participating in any borrower defense claim if my then current or former employer were a party to the claim, I would not be disqualified under 18 U.S.C. § 208 or under paragraph 6 of the Ethics Pledge from participation in the review of, and any policy changes to, the borrower defense regulation.

In addition, I also raised the question with the DAEO of whether I should recuse myself from consideration of the gainful employment regulation; I then decided to simply recuse myself on that issue regardless of whether the ethics rules required such a recusal. The DAEO advised me on how best to communicate to my colleagues at the Department that I was recusing myself with regard to the specific borrower defense claims pertaining to then current and prior employers and with regard to consideration of the gainful employment regulation. I then informed my colleagues at the Department that I had recused myself both from any particular matters involving my then current and former employers as specific parties and from any considerations of the gainful employment regulation. I have followed through on both of these recusal commitments. I stepped down from the position with my then employer upon accepting a permanent position at the Department on April 5, 2017.

During the time period when I was on an unpaid leave of absence from my then employer from February 13 to April 5, 2017, I discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). I could do so because the borrower defense regulation would not require my recusal (whether I was on a leave of absence or not). I was advised that the ethics analysis applicable to being on an unpaid leave of absence and being permanently employed requires the same outcome. I was advised during my unpaid leave of absence that I was not subject to disqualification under paragraph 6 of the Ethics Pledge or the conflict of interest statute in regard to the review of and any possible changes to the borrower defense regulations. With regard to the conflict of interest statute, this conclusion by the DAEO followed from the fact that the borrower defense regulation is not a particular matter because it is directed to the interests of a large and diverse group of persons, including almost all of the institutions and borrowers involved with Title IV funds.

Please also refer to my responses to questions 1 and 2.