

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 285 United States Department of Education

**SPONSOR(S):** Porter and others

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	7 Y, 6 N	Dougherty	Rojas
2) Education Committee			

### SUMMARY ANALYSIS

After a long history of federal involvement in education and despite its controversial nature, Congress narrowly created the modern U.S. Department of Education (Department) in 1979. Many people considered this new cabinet-level agency unconstitutional as the Constitution does not address education. Furthermore, opponents believed it to be an intrusion of state and local governments. Defenders of the Department claimed that the Commerce Clause granted the federal government constitutional power over education while the Taxing and Spending Clause granted funding power over education.

Despite the continued opposition, the Department has grown significantly since its controversial establishment. Today, the Department operates programs that touch on every area and level of education. It's elementary and secondary programs annually serve nearly 16,000 school districts and approximately 49 million students attending more than 98,000 public schools and 28,000 private schools. Department programs also provide grant, loan, and work-study assistance to more than 15 million postsecondary students.

Nonetheless, opposition to the Department remains strong. Examining the 35 years of its continued operation, budget, and results, many consider the Department to be an expensive failure wrought with abuse and little to no return. Testing data shows that students in the U.S. have not been significantly benefitted by the myriad of programs organized or funded by the Department, especially when compared to market-driven models such as school choice. Opponents also object to the broad scope of areas in which the Department is involved, intruding on states, local governments, and families. Furthermore, numerous cases of fraud, abuse, and waste have cost the taxpayers billions of dollars. For these and various other reasons, many people are calling for the abolishment of the Department.

This memorial urges Congress to abolish the United States Department of Education so that education policies, reforms and requirements may be determined by the states, local governments, and parents.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### History leading to the establishment of the modern Department of Education in 1979

The federal government has a long history of ever-strengthening involvement in education-oriented activities and funding. The first Department of Education was created in 1867,<sup>1</sup> with a budget of \$15,000, to serve as a clearing house for educators and policymakers,<sup>2</sup> largely due to the lobbying efforts of the National Teachers Association (later the National Education Association). The following year, the Department was demoted to the Office of Education in the Department of the Interior. In 1939, the Office was moved to the newly-created Federal Security Agency, which became a cabinet-level department in 1953 as the Department of Health, Education, and Welfare (HEW).

Between 1890 and 1911, various acts empowered the Office of Education to fund the land-grant colleges,<sup>3</sup> vocational education, and specific nautical schools.<sup>4</sup> One such measure funded vocational schools while also placing detailed rules on recipient institutions.<sup>5</sup> The Smith-Sears Veterans Vocational Rehabilitation Act of 1918 (also known as Soldier Rehabilitation Act) provided grants for a national rehabilitation program for injured World War I veterans. The New Deal subsidized a variety of education-oriented activities such as school construction and repairs, teacher hiring, loans to school districts, and grants to rural schools.<sup>6</sup>

Subsidies continued to grow as federal education legislation expanded. The Lanham Act of 1940 Amendments authorized federal aid for construction, maintenance, and operation of schools in federally impacted areas.<sup>7</sup> The School Lunch Indemnity Plan of 1943<sup>8</sup> provided funds for local lunch food purchases. The National School Lunch Act of 1946<sup>9</sup> authorized assistance to states in providing adequate foods and facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs. The George-Barden Act of 1946 funded teacher training and education and focused on agricultural, industrial, and home economics training for high school students.<sup>10</sup> World War II led to a significant expansion of the federal role in education. Impact aid for schools with heavy federal defense presence became commonplace.<sup>11</sup> The Vocational Rehabilitation Act of 1943<sup>12</sup> provided assistance to disabled veterans. The Servicemen's Readjustment Act of 1944 ("G.I. Bill")

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<sup>1</sup> The Department of Education Act of 1867, 14 Stat. 434, available at <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=014/llsl014.db&recNum=465>.

<sup>2</sup> [http://www.downsizinggovernment.org/education/timeline-growth#\\_edn3](http://www.downsizinggovernment.org/education/timeline-growth#_edn3), citing Neal McCluskey, *Feds in the Classroom*, Rowman & Littlefield 2007, p. 18.

<sup>3</sup> The Second Morrill Act of 1890, 26 Stat. 417, 7 U.S.C. 322 et seq., available at <http://www.csrees.usda.gov/about/offices/legis/secondmorrill.html>. The First Morrill Act of 1862 authorized public land grants to the states for the establishment and maintenance of agricultural and mechanical colleges.

<sup>4</sup> The State Marine School Act of 1911.

<sup>5</sup> The Smith-Hughes Act of 1917, P.L. 64-347, 39 Stat. 929.

<sup>6</sup> The Smith-Bankhead Act of 1920 authorized grants to states for vocational rehabilitation programs. The Bankhead-Jones Act of 1935 (P.L. 74-182) authorized grants to states for agricultural experiment stations. The Agricultural Adjustment Act of 1935 (P.L. 74-320) authorized certain federal purchases of agricultural commodities, which were used in school lunch programs the following year. (The National School Lunch Act of 1946 continued and expanded this assistance.) The 1936 Act to Further the Development and Maintenance of an Adequate and Well-Balanced American Merchant Marine (P.L. 74-415) established the U.S. Merchant Marine Academy. The National Cancer Institute Act of 1937 (P.L. 75-244) established the Public Health Service fellowship program.

<sup>7</sup> This assistance was continued under P.L. 81-815 and P.L. 81-874 in 1950.

<sup>8</sup> P.L. 78-129.

<sup>9</sup> P.L. 79-396.

<sup>10</sup> P.L. 79-586.

<sup>11</sup> The Impact Aid laws of 1950, P.L. 81-815 and P.L. 874.

<sup>12</sup> P.L. 78-16.

federally funded education costs for over 7 million World War II veterans.<sup>13</sup> The United States Information and Educational Exchange Act of 1948<sup>14</sup> provided for the interchange of people, knowledge, and skills between the United States and other countries.

The Cold War spurred the passage of the first comprehensive education bill, The National Defense Education Act of 1958.<sup>15</sup> Passed in response to the Soviet Union's launch of Sputnik, the Act was intended to “provide substantial assistance in various forms to individuals, and to States and their subdivisions, in order to insure trained man-power of sufficient quality and quantity to meet the national defense needs of the United States.” The U.S. Air Force Academy was established<sup>16</sup> and practical nurse training was pursued.<sup>17</sup> The expansion of other subsidies and the federal role in education continued throughout the Cold War.<sup>18</sup>

In the 1960s, civil rights awareness ushered in education equal access legislation. This included a wide array of subjects, from training teachers of mentally disabled students<sup>19</sup> and training<sup>20</sup> and captioned films for the deaf<sup>21</sup> to educating refugees,<sup>22</sup> the underemployed,<sup>23</sup> and students in health professions.<sup>24</sup> The Civil Rights Act of 1964<sup>25</sup> authorized support for institutions of higher education and school districts to provide in-service programs for assisting instructional staff in dealing with problems caused

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<sup>13</sup> P.L. 78-346, 58 Stat. 284m. See <http://www.ourdocuments.gov/doc.php?flash=true&doc=76>.

<sup>14</sup> P.L. 80-402, 62 Stat. 6, available at <http://mountainrunner.us/files/2012/05/Public-Law-80-4021.pdf>.

<sup>15</sup> P.L. 85-864, 72 Stat. 1580, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg1580.pdf>. This Act funds higher education loans, vocational teacher training, and various courses in the K–12 schools. Specifically, the Act provided assistance to state and local school systems for instruction in science, mathematics, modern foreign languages, and other critical subjects; state statistical services; guidance, counseling, and testing services and training institutes; higher education student loans and fellowships as well as foreign language study and training; experimentation and dissemination of information on more effective use of television, motion pictures, and related media for educational purposes; and vocational education for technical occupations necessary to the national defense.

<sup>16</sup> An Act for the Establishment of the United States Air Force Academy and Other Purposes of 1954, P.L. 83-325

<sup>17</sup> The Practical Nurse Training Act of 1957, P.L. 84-911.

<sup>18</sup> Examples include The Educational Research Act of 1954 (P.L. 83-531, which authorized cooperative arrangements with universities, colleges, and state educational agencies for educational research); The School Milk Program Act (P.L. 83-597, which funded the purchase of milk for school lunch programs); The Library Services Act (P.L. 84-597, which provided grants to states for extension and improvement of rural public library services); and the Area Redevelopment Act (P.L. 87-27, which included provisions for training or retraining of people in redevelopment areas).

<sup>19</sup> The Education of Mentally Retarded Children Act, P.L. 85-926, 72 Stat. 1777, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg1777.pdf>.

<sup>20</sup> The National Technical Institute for the Deaf Act (P.L. 89-36) provided for the establishment, construction, equipping, and operation of a residential school for postsecondary education and technical training of the deaf.

<sup>21</sup> The Captioned Films for the Deaf Act, P.L. 85-905, 72 Stat. 1742, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg1742.pdf>.

<sup>22</sup> The Migration and Refugee Assistance Act of 1962 (P.L. 87-510) authorized loans, advances, and grants for education and training of refugees.

<sup>23</sup> The Manpower Development and Training Act of 1962 (P.L. 87-415) provided training in new and improved skills for the unemployed and underemployed.

<sup>24</sup> The Health Professions Educational Assistance Act of 1963 (P.L. 88-129) provided funds to expand teaching facilities and for loans to students in the health professions. Additionally, The Health Professions Educational Assistance Amendments of 1965 (P.L. 89-290) authorized scholarships for students in the health professions.

<sup>25</sup> The variety of other legislative measures affecting education included School Assistance in Disaster Areas Act of 1965 (P.L. 89-313, which assisted local education agencies with exceptional costs from a major disaster), The Adult Education Act (P.L. 89-750, which authorized grants to states for the encouragement of adult education, including teacher training and demonstrations), The Public Broadcasting Act of 1967 (P.L. 90-129, which established a Corporation for Public Broadcasting to channel federal funds to noncommercial radio, television stations, and educational television networks; conduct research and training for noncommercial broadcasting; and construct educational radio and television facilities), The National Commission on Libraries and Information Services Act (P.L. 91-345, which established a National Commission on Libraries and Information Science to effectively utilize the nation's educational resources), and The Environmental Education Act (P.L. 91-516, which established an Office of Environmental Education to develop curriculum and initiate environmental education; provide training and community education; and distribute material dealing with the environment and ecology).

<sup>26</sup> P.L. 88-352.

by desegregation.<sup>27</sup> The largest education efforts of the 1960s include The Elementary and Secondary Education Act of 1965,<sup>28</sup> The Higher Education Act of 1965,<sup>29</sup> and The Education for All Handicapped Children Act.<sup>30</sup>

The Elementary and Secondary Education Act of 1965 authorized grants for elementary and secondary school programs for children of low-income families; school library resources, textbooks, and other instructional materials for school children; supplementary educational centers and services; strengthening state education agencies; and educational research and research training. The Education Professions Development Act of 1967<sup>31</sup> amended the Higher Education Act for the purpose of improving the quality of teaching and to help meet critical shortages of adequately trained educational personnel. Amendments in 1968<sup>32</sup> modified existing programs and authorized support of regional centers for education of children with disabilities, model centers and services for deaf-blind children, recruitment of personnel and dissemination of information on education of the disabled; technical assistance in education to rural areas; support of dropout prevention projects; and support of bilingual education programs. An Extension in 1970 authorized comprehensive planning and evaluation grants to state and local education agencies; provided for the establishment of a National Commission on School Finance.<sup>33</sup>

The Higher Education Act of 1965 provided grants for university community service programs, college library assistance, library training and research, strengthening developing institutions, teacher training programs, and undergraduate instructional equipment; authorized insured student loans; established a National Teacher Corps; and provided for graduate teacher training fellowships. Colleges and universities were also subsidized by The Higher Education Facilities Act of 1963,<sup>34</sup> which authorized grants and loans for classrooms, libraries, and laboratories in public community colleges and technical institutes, as well as undergraduate and graduate facilities in other institutions of higher education.<sup>35</sup>

The Education for All Handicapped Children Act provided that all children with disabilities have available to them a free appropriate education designed to meet their unique needs. Handicapped and disabled students were further provided for by The Handicapped Children's Early Education Assistance Act<sup>36</sup> and The Model Secondary School for the Deaf Act.<sup>37</sup>

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<sup>27</sup> Additionally, The Office of Education Appropriation Act (P.L. 91-380) provided emergency school assistance to desegregating local education agencies.

<sup>28</sup> P.L. 89-10, 79 Stat. 27, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-79/pdf/STATUTE-79-Pg27.pdf>. This Act funds primary and secondary education, specifically for professional development, instructional materials, program resources, and parental involvement promotion. It also forbids a national curriculum and establishes new standards and accountability. The act was originally authorized through 1970; however, the government has reauthorized the act every five years since its enactment.

<sup>29</sup> P. L. 89-329, 79 Stat. 1219, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-79/pdf/STATUTE-79-Pg1219.pdf>. The Act authorized assistance for postsecondary education, including financial aid programs for college students.

<sup>30</sup> P.L. 94-142, 89 Stat. 773, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-89/pdf/STATUTE-89-Pg773.pdf>. This Act, later renamed the Individuals with Disabilities Education Act, requires federally-funded public schools to enroll, educate, integrate, and feed mentally and physically disabled children. It also provides the parents of those children with procedures to challenge whether the federal mandates are being satisfied.

<sup>31</sup> P.L. 90-35.

<sup>32</sup> P.L. 90-247.

<sup>33</sup> The Elementary and Secondary Education Assistance Programs, Extension, P.L. 91-230.

<sup>34</sup> P.L. 88-204.

<sup>35</sup> Other higher education legislation of the era includes The International Education Act (P.L. 89-698, which provided grants to institutions of higher education for the establishment, strengthening, and operation of centers for research and training in international studies) and The National Sea Grant College and Program Act (P.L. 89-688, which authorized the establishment and operation of Sea Grant Colleges and programs of education and research in the various fields relating to the development of marine resources).

<sup>36</sup> P.L. 90-538. The Act authorized preschool and early education programs for disabled children.

<sup>37</sup> P.L. 89-694. The Act authorized the establishment and operation, by Gallaudet College, of a model secondary school for the deaf.

Vocational education was specifically addressed in 1963<sup>38</sup> and again in 1968.<sup>39</sup> Other legislation of note included The Economic Opportunity Act of 1964<sup>40</sup> and The National Foundation on the Arts and the Humanities Act.<sup>41</sup>

Education legislation in the 1970s addressed drug abuse education<sup>42</sup> and treatment,<sup>43</sup> elderly access to education,<sup>44</sup> juvenile justice,<sup>45</sup> telecommunications,<sup>46</sup> and employment measures.<sup>47</sup> Tuition assistance was expanded.<sup>48</sup> Subjects further from mainstream included Indian education<sup>49</sup> and tribally-controlled colleges.<sup>50</sup>

### Controversial establishment of the modern Department of Education in 1979

Fulfilling a campaign promise to the teachers' unions that endorsed him, President Jimmy Carter oversaw the removal of the over 150 education programs from HEW and the subsequent creation of a cabinet-level Department of Education (ED, "Department") in 1979.<sup>51</sup> <sup>52</sup> At the time of its dissolution,

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<sup>38</sup> The Vocational Education Act of 1963 (P.L. 88-210) increased federal support of vocational education schools; vocational work-study programs; and research, training, and demonstrations in vocational education.

<sup>39</sup> The Vocational Education Amendments of 1968 (P.L. 90-576) modified existing programs and provided for a National Advisory Council on Vocational Education and collection and dissemination of information for programs administered by the Commissioner of Education.

<sup>40</sup> P.L. 88-452. The Act authorized grants for college work-study programs for students from low-income families; established a Job Corps program and authorized support for work-training programs to provide education and vocational training and work experience opportunities in welfare programs; authorized support of education and training activities and of community action programs, including Head Start, Follow Through, and Upward Bound; and authorized the establishment of Volunteers in Service to America (VISTA).

<sup>41</sup> P.L. 89-209. The Act authorized grants and loans for projects in the creative and performing arts and for research, training, and scholarly publications in the humanities.

<sup>42</sup> The Drug Abuse Education Act of 1970 (P.L. 91-527) provided for development, demonstration, and evaluation of curricula on the problems of drug abuse.

<sup>43</sup> The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) established a Special Action Office for Drug Abuse Prevention to provide overall planning and policy for all federal drug-abuse prevention functions; a National Advisory Council for Drug Abuse Prevention; community assistance grants for community mental health centers for treatment and rehabilitation of people with drug-abuse problems; and, in December 1974, a National Institute on Drug Abuse.

<sup>44</sup> The Older Americans Comprehensive Services Amendment of 1973 (P.L. 93-29) made available to older citizens comprehensive programs of health, education, and social services.

<sup>45</sup> The Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93-415) provided for technical assistance, staff training, centralized research, and resources to develop and implement programs to keep students in elementary and secondary schools; and established, in the U.S. Department of Justice, a National Institute for Juvenile Justice and Delinquency Prevention.

<sup>46</sup> The Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976 (P.L. 94-309) established a telecommunications demonstration program to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information.

<sup>47</sup> The Comprehensive Employment and Training Act of 1973 (P.L. 93-203) provided for opportunities for employment and training to unemployed and underemployed people. The Youth Employment and Demonstration Projects Act of 1977 (P.L. 95-93) established a youth employment training program including education-to-work transition, literacy training and bilingual training, and attainment of certificates of high school equivalency. The Career Education Incentive Act (P.L. 95-207) authorized the establishment of a career education program for elementary and secondary schools.

<sup>48</sup> The Harry S Truman Memorial Scholarship Act (P.L. 93-642) created a perpetual education scholarship fund for young students to pursue careers in public service. The Middle Income Student Assistance Act (P.L. 95-566) modified the provisions for student financial assistance programs to allow middle-income as well as low-income students attending college or other postsecondary institutions to qualify for federal education assistance.

<sup>49</sup> The Indian Self-Determination and Education Assistance Act (P.L. 93-638) provided for increased participation of Indians in the establishment and conduct of their education programs and services.

<sup>50</sup> The Tribally Controlled Community College Assistance Act of 1978 (P.L. 95-471) provided federal funds for the operation and improvement of tribally controlled community colleges for Indian students.

<sup>51</sup> The Department of Education Organization Act (P.L. 96-88; 93 Stat. 668), available at

<http://history.nih.gov/research/downloads/PL96-88.pdf>. The newly-established Department of Education containing functions from the Education Division of the U.S. Department of Health, Education, and Welfare (HEW) along with other selected education programs from HEW, the U.S. Department of Justice, U.S. Department of Labor, and the National Science Foundation.

the Office of Education had 3,000 employees and an annual budget of \$12 billion.<sup>53</sup> The new Department of Education reportedly received an annual budget of \$14.2 billion<sup>54</sup> and became operational with 6,400 employees.<sup>55</sup>

Creating a cabinet-level Education Department was controversial as many regarded it as unconstitutional since the Constitution does not grant federal jurisdiction over education. Opponents, largely Republicans and the American Federation of Teachers, argued that a cabinet-level Department was an intrusion of state and local governments. The counterargument, proffered mostly by Democrats and the National Education Association, was that the Commerce Clause<sup>56</sup> granted the federal government constitutional power over education while the Taxing and Spending Clause<sup>57</sup> granted funding power over education.

### Legislative history after the establishment of the Department of Education in 1979

After campaigning against "President Carter's new bureaucratic boondoggle,"<sup>58</sup> President Reagan consolidated some educational grants into block grants which restrain federal education spending by giving the state and local governments spending discretion.<sup>59</sup> President Reagan's 1982 proposal to eliminate the Department of Education failed. The blue-ribbon National Commission on Excellence in Education released the influential 1983 report *A Nation at Risk: The Imperative for Educational Reform*,<sup>60</sup> which sharply criticizes the failure of public schools. The report sets back President Reagan's efforts to eliminate the Department and reduce federal intervention in education.

The Education for Economic Security Act of 1984,<sup>61</sup> largely in response to the dire findings of the commission report, increased federal regulation, oversight, and funding jurisdiction for education.

Federal education legislation in the 1980s dealt with program consolidation,<sup>62</sup> student loan interest rates,<sup>63</sup> new science and math programs,<sup>64</sup> and a new G.I. bill.<sup>65</sup> Other measures sought to increase

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<sup>52</sup> Carter also planned to transfer the education functions of the departments of Defense, Justice, Housing and Urban Development, and Agriculture, as well as a few other federal entities. Among the federal education-related programs that were not proposed to be transferred included Headstart, the Department of Agriculture's school lunch and nutrition programs, the Department of the Interior's Indian education programs, and the Department of Labor's education and training programs. See <http://news.google.com/newspapers?id=IkwnAAAAIBAJ&sjid=OGODAAAAIBAJ&pg=5661,1224804&dq=department+of+education&hl=en>.

<sup>53</sup> Hechinger, Fred M (September 3, 1979). "Federal Education Branch Is Foundering, Leaderless". Lexington, North Carolina: The Dispatch, via Google News. New York Times News Service, available at <http://news.google.com/newspapers?id=zUgAAAAIBAJ&sjid=qVEEAAAAIBAJ&pg=6849,7247406&dq=department-of-education+senate&hl=en>.

<sup>54</sup> "Education Department Created," *The Palm Beach Post*, via Google News. United Press International. October 18, 1979, available at <http://news.google.com/newspapers?id=0sZUAAAAIBAJ&sjid=ejsNAAAAIBAJ&pg=1984,3959160&dq=department+of+education&hl=en>.

<sup>55</sup> Budget of the U.S. Government, Fiscal Year 1982, Special Analyses, p. 279, available at [http://fraser.stlouisfed.org/docs/publications/usspa/Specanalyses\\_1982.pdf](http://fraser.stlouisfed.org/docs/publications/usspa/Specanalyses_1982.pdf).

<sup>56</sup> The Commerce Clause grants Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," Article 1, Section 8, Clause 3 of the U.S. Constitution.

<sup>57</sup> The Taxing and Spending Clause grants Congress the power to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States," Article 1, Section 8, Clause 1 of the U.S. Constitution.

<sup>58</sup> See <http://www.nytimes.com/1982/11/14/education/reagan-record-in-education-mixed-results.html>.

<sup>59</sup> Id.

<sup>60</sup> Available at <http://www2.ed.gov/pubs/NatAtRisk/index.html>.

<sup>61</sup> P.L. 98-377, 98 Stat. 1267, available at <http://www.gpo.gov/fdsys/pkg/STATUTE-98/pdf/STATUTE-98-Pg1267.pdf>. This Act funds new science and math programs at the K-12 and postsecondary levels.

<sup>62</sup> The Education Consolidation and Improvement Act of 1981 (P.L. 97-35) consolidated 42 programs into 7 programs to be funded under the elementary and secondary block grant authority.

<sup>63</sup> The Student Loan Consolidation and Technical Amendments Act of 1983 (P.L. 98-79) established an 8 percent interest rate for Guaranteed Student Loans and an extended Family Contribution Schedule.

education access to the handicapped<sup>66</sup> and homeless.<sup>67</sup> Vocational assistance,<sup>68</sup> anti-drug programs,<sup>69</sup> and elementary and secondary education programs<sup>70</sup> were continued. Tax reform amendments allowed for higher education savings bonds.<sup>71</sup> Under President Reagan, the Challenge Grant program encouraged educational institutions to seek alternative funding.<sup>72</sup>

President George H.W. Bush embraced federal involvement in education beyond just funding, establishing national education goals such as his “America 2000” proposal<sup>73</sup> and creating the National Council on Education Standards and Testing.<sup>74</sup> These and other related efforts dissipated any anti-ED momentum created by President Reagan. Varied and novel education legislation was passed during the tenure of President Bush, ranging from a national math and science clearinghouse<sup>75</sup> to disability discrimination<sup>76</sup> to community service.<sup>77</sup> Other notable legislative measures include The National Literacy Act,<sup>78</sup> The High-Performance Computing Act,<sup>79</sup> the Veterans’ Educational Assistance Amendments,<sup>80</sup> and the Civil Rights Act of 1991.<sup>81</sup>

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<sup>64</sup> The Education for Economic Security Act (P.L. 98-377) added new science and mathematics programs for elementary, secondary, and postsecondary education. The new programs included magnet schools, excellence in education, and equal access.

<sup>65</sup> The Montgomery GI Bill—Active Duty (P.L. 98-525) brought about a new GI Bill for individuals who initially entered active military duty on or after July 1, 1985. The Montgomery GI Bill—Selected Reserve (P.L. 98-525) established an education program for members of the Selected Reserve (which includes the National Guard) who enlist, reenlist, or extend an enlistment after June 30, 1985, for a 6-year period.

<sup>66</sup> The Education of the Handicapped Act Amendments of 1983 (P.L. 98-199) added the Architectural Barrier amendment and clarified participation of children with disabilities in private schools. The Handicapped Children’s Protection Act of 1986 (P.L. 99-372) allowed parents of children with disabilities to collect attorneys’ fees in cases brought under the Education of the Handicapped Act and provided that the Education of the Handicapped Act does not preempt other laws, such as Section 504 of the Rehabilitation Act.

<sup>67</sup> The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100-628) extended for 2 additional years programs providing assistance to the homeless, including literacy training for homeless adults and education for homeless youths.

<sup>68</sup> The Carl D. Perkins Vocational Education Act (P.L. 98-524) continued federal assistance for vocational education through FY 1989. The act replaced the Vocational Education Act of 1963. It provided aid to the states to make vocational education programs accessible to all people, including disabled and disadvantaged, single parents and homemakers, and the incarcerated.

<sup>69</sup> The Drug-Free Schools and Communities Act of 1986 (P.L. 99-570) established programs for drug abuse education and prevention, coordinated with related community efforts and resources, through the use of federal financial assistance.

<sup>70</sup> The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-297) reauthorized through 1993 major elementary and secondary education programs, including Chapter 1, Chapter 2, Bilingual Education, Math-Science Education, Magnet Schools, Impact Aid, Indian Education, Adult Education, and other smaller education programs.

<sup>71</sup> The Tax Reform Technical Amendments (P.L. 100-647) authorized an Education Savings Bond for the purpose of postsecondary educational expenses. The bill grants tax exclusion for interest earned on regular series EE savings bonds.

<sup>72</sup> The Challenge Grant Amendments of 1983 (P.L. 98-95) amended Title III, Higher Education Act, and added authorization of the Challenge Grant program. The Challenge Grant program provides funds to eligible institutions on a matching basis as an incentive to seek alternative sources of funding.

<sup>73</sup> See [http://www.archives.nysed.gov/edpolicy/research/res\\_essay\\_bush\\_ghw\\_amer2000.shtml](http://www.archives.nysed.gov/edpolicy/research/res_essay_bush_ghw_amer2000.shtml).

<sup>74</sup> See [http://www.archives.nysed.gov/edpolicy/research/res\\_essay\\_bush\\_ghw\\_sysreform.shtml](http://www.archives.nysed.gov/edpolicy/research/res_essay_bush_ghw_sysreform.shtml).

<sup>75</sup> The Excellence in Mathematics, Science and Engineering Education Act of 1990 (P.L. 101-589) created a national mathematics and science clearinghouse and created several other mathematics, science, and engineering education programs.

<sup>76</sup> The Americans with Disabilities Act of 1990 (P.L. 101-336) prohibited discrimination against people with disabilities.

<sup>77</sup> The National and Community Service Act of 1990 (P.L. 101-610) increased school and college-based community service opportunities and authorized the President’s Points of Light Foundation.

<sup>78</sup> The National Literacy Act of 1991 (P.L. 102-73) established the National Institute for Literacy, the National Institute Board, and the Interagency Task Force on Literacy. Amended various federal laws to establish and extend various literacy programs.

<sup>79</sup> The High-Performance Computing Act of 1991 (P.L. 102-194) directed the President to implement a National High-Performance Computing Program and provided for the establishment of a National Research and Education Network; standards and guidelines for high-performance networks; and the responsibility of certain federal departments and agencies with regard to the Network.

<sup>80</sup> The Veterans’ Educational Assistance Amendments of 1991 (P.L. 102-127) restored certain educational benefits available to reserve and active-duty personnel under the Montgomery GI Bill to students whose courses of studies were interrupted by the Persian Gulf War.

<sup>81</sup> The Civil Rights Act of 1991 (P.L. 102-166) amended the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990, with regard to employment discrimination. It established the Technical Assistance Training Institute.

President Bill Clinton built on his predecessor's national education goals, most notably by signing into law the Goals 2000: Educate America Act<sup>82</sup> and The Improving America's Schools Act.<sup>83</sup> These required states to develop federally approved, coordinated education plans and to adopt a system of tests to measure yearly progress. State noncompliance results in the loss of federal subsidies. Other notable education legislation during this time include The Student Loan Reform Act,<sup>84</sup> The National Service Trust Act,<sup>85</sup> The School-To-Work Opportunities Act of 1994,<sup>86</sup> The Contract With America: Unfunded Mandates,<sup>87</sup> The Taxpayer Relief Act of 1997,<sup>88</sup> The Workforce Investment Act of 1998,<sup>89</sup> and The Omnibus Consolidated and Emergency Supplemental Appropriations Act.<sup>90 91</sup>

President George W. Bush is well known for favoring education reform, most notably by The No Child Left Behind Act.<sup>92</sup> This 2002 reauthorization of the Elementary and Secondary Education Act<sup>93</sup> expands the federal role in public education through annual testing, academic progress, report cards, teacher qualifications, and funding changes.<sup>94</sup> This bolster of federal involvement in the classroom increased the Department's K - 12 spending from \$20 billion in 2000 to \$37 billion by 2005.<sup>95</sup> With these new federal funds came more regulations regarding a wide variety of topics such as student testing, teacher qualifications, Spanish language tests, and after-school tutoring. President Bush's other education legislation ranges from higher education opportunity concerns<sup>96</sup> to natural disaster relief<sup>97</sup> to technical

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<sup>82</sup> P.L. 103-227. The Act established a new federal partnership through a system of grants to states and local communities to reform the nation's education system and formalized the national education goals and established the National Education Goals Panel. See <https://www.govtrack.us/congress/bills/103/hr1804>.

<sup>83</sup> See <https://www.govtrack.us/congress/bills/103/hr6>.

<sup>84</sup> P.L. 103-66. The Act reformed the student aid process by phasing in a system of direct lending designed to provide savings for taxpayers and students. Allows students to choose among a variety of repayment options, including income contingency.

<sup>85</sup> P.L. 103-82. The Act amended the National and Community Service Act of 1990 to establish a Corporation for National Service. In addition, provided education grants up to \$4,725 per year for 2 years to people age 17 or older who perform community service before, during, or after postsecondary education.

<sup>86</sup> P.L. 103-239. The Act established a national framework within which states and communities can develop School-To-Work Opportunities systems to prepare young people for first jobs and continuing education. The Act also provided money to states and communities to develop a system of programs that include work-based learning, school-based learning, and connecting activities components.

<sup>87</sup> P.L. 104-4. The Act ended the imposition, in the absence of full consideration by Congress, of federal mandates on state, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and ensured that the federal government pays the costs incurred by those governments in complying with certain requirements under federal statutes and regulations.

<sup>88</sup> P.L. 105-34, 111 Stat. 787, available at <http://www2.ed.gov/PDFDocs/hr2014.pdf>. The Act creates various federal income tax credits for education and enacted the Hope Scholarship and Life-Long Learning Tax Credit provisions into law. Today, there are 16 special income tax benefits for education, including breaks for college expenses, work-related education, and family farms. See <http://www.irs.gov/uac/Tax-Benefits-for-Education:-Information-Center>.

<sup>89</sup> P.L. 105-220. The Act enacted the Adult Education and Family Literacy Act, and substantially revised and extended, through FY 2003, the Rehabilitation Act of 1973.

<sup>90</sup> P.L. 105-277. The Act enacted the Reading Excellence Act, to promote the ability of children to read independently by the third grade; and earmarked funds to help states and school districts reduce class sizes in the early grades.

<sup>91</sup> Other Clinton-era legislation of note are The District of Columbia College Access Act of 1999 (P.L. 106-98, which afforded D.C. high school graduates the benefits of in-state tuition at state colleges and universities outside D.C.); The National Defense Authorization Act for Fiscal Year 2001 (P.L. 106-398, which included the Impact Aid Reauthorization Act extending the Impact Aid programs through FY 2003); The College Scholarship Fraud Prevention Act of 2000 (P.L. 106-420, which enhanced federal penalties for scholarship fraud; required an annual scholarship fraud report by the A.G., the Secretary of Education, and the FTC).

<sup>92</sup> P.L. 107-110, 115 Stat. 1425.

<sup>93</sup> See note 28 above.

<sup>94</sup> "No Child Left Behind". Ed Week. Available at <http://www.edweek.org/ew/issues/no-child-left-behind/>.

<sup>95</sup> U.S. Department of Education, Digest of Education Statistics, 2008, Table 375, available at <http://nces.ed.gov/pubs2009/2009020.pdf>.

<sup>96</sup> The Higher Education Relief Opportunities for Students Act of 2001 (P.L. 107-122) provided the Secretary of Education with waiver authority over student financial aid programs under Title IV of the Higher Education Act of 1965, to deal with student and family situations resulting from the September 11, 2001, terrorist attacks. The Higher Education Relief Opportunities for Students Act of 2003 (P.L. 108-76) provided the Secretary of Education with waiver authority over student financial aid programs under Title IV of the Higher Education Act of 1965, to deal with student and family situations resulting from wars or national emergencies.

Permanent extension of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) (P.L. 110-93) gave the



education.<sup>98</sup> School facilities were provided for by The Consolidated Appropriations Act 2001.<sup>99</sup> The educational challenges of the country were researched under The Reauthorization of the National Center for Education Statistics and the Creating of the Institute of Education Sciences of 2002.<sup>100</sup> Student interest rates<sup>101</sup> and disabilities education<sup>102</sup> were addressed. The America Competes Act of 2007<sup>103</sup> created a range of new science, engineering, and math education programs. Less well-known legislation encouraged celebrating the fiftieth anniversary of *Brown v. Board of Education*<sup>104</sup> and naming the Department's headquarters.<sup>105</sup>

President Barack Obama took an innovative approach to encourage K – 12 educational reforms by states and local governments with the 4-year grant program "Race to the Top."<sup>106</sup> Beginning in 2009, states were urged to compete for federally-awarded points, which are awarded for satisfying particular federal education policies. These policies include performance-based standards, Common Core standards,<sup>107</sup> lifting caps on charter schools, improving the poorest-performing schools, and building instruction-supporting data systems.<sup>108</sup> Each state's point tally and share of the federal population of school children correspond to the portion of the \$4.35 billion available to be awarded. Florida was

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Secretary of Education authority to waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the Higher Education Act of 1965 as deemed necessary in connection with a war or other military operation or national emergency. The Higher Education Reconciliation Act of 2005 (P.L. 109-171) made various amendments to programs of student financial assistance under Title IV of the Higher Education Act of 1965 and the Higher Education Opportunity Act of 2008 (P.L. 110-315) provided a comprehensive reauthorization of the Higher Education Act of 1965.

<sup>97</sup> The Student Grant Hurricane and Disaster Relief Act of 2005 (P.L. 109-67) authorized the Secretary of Education to waive certain repayment requirements for students receiving campus-based federal grant assistance if attending an institution of higher education located in a major disaster area, or their attendance was interrupted because of the disaster. The Natural Disaster Student Aid Fairness Act (P.L. 109-86) authorized the Secretary of Education during FY 2006 to reallocate campus-based student aid funds to institutions of higher learning in Louisiana, Mississippi, Alabama, and Texas, or institutions that have accepted students displaced by Hurricanes Katrina or Rita. The law also waived requirements for matching funds that are normally imposed on institutions and students. The Hurricane Education Recovery Act (HERA) (P.L. 109-148) provided funds for states affected by Hurricane Katrina to restart school operations, provide temporary emergency aid for displaced students, and assist homeless youth. The law also permitted the Secretary of Education to extend deadlines under the Individuals with Disabilities Education Act for those affected by Katrina or Rita.

<sup>98</sup> The Assistive Technology Act of 2004 (P.L. 108-364) reauthorized the Assistive Technology program, administered by the Department of Education and The Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109-270) reauthorized the vocational and technical education programs under the Perkins Act through 2012.

<sup>99</sup> P.L. 106-554. The Act created a new program of assistance for school repair and renovation, and amended the Elementary and Secondary Education Act of 1965 to authorize credit enhancement initiatives to help charter schools obtain, construct, or repair facilities; reauthorized the Even Start program; and enacted the "Children's Internet Protection Act."

<sup>100</sup> P.L. 107-279. The Act established the Institute of Education Sciences within the U.S. Department of Education to carry out a coordinated, focused agenda of high-quality research, statistics, and evaluation that is relevant to the educational challenges of the nation.

<sup>101</sup> The Student Loan Interest Rates Act established fixed interest rates for student and parent borrowers (P.L. 107-139) under Title IV of the Higher Education Act of 1965. The College Cost Reduction and Access Act of 2007 (P.L. 110-84) reduced interest rates on student loans and made other amendments to the Higher Education Act of 1965 to make college more accessible and affordable.

<sup>102</sup> The Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446) provided a comprehensive reauthorization of the Individuals with Disabilities Education Act.

<sup>103</sup> P.L. 110-69, 121 Stat. 572, available at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ69/pdf/PLAW-110publ69.pdf>. America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act created new STEM (science, technology, engineering, and mathematics) education programs in various agencies, including the Department of Education. The next year, the Department's spending rose to \$68 billion, more than double fiscal year 2000's \$33 billion. See *Budget of the U.S. Government, Fiscal Year 2009, Historical Tables*, p. 79, available at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/budget/fy2009/pdf/hist.pdf>.

<sup>104</sup> *The 50th Anniversary of Brown v. the Board of Education* (P.L. 107-41) established a commission for the purpose of encouraging and providing for the commemoration of the 50th anniversary of the 1954 Supreme Court decision *Brown v. Board of Education*.

<sup>105</sup> Public Law 110-15 designated the Department of Education Headquarters Building as the "Lyndon Baines Johnson Department of Education Building."

<sup>106</sup> The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) provided about \$100 billion to state education systems and supplemental appropriations for several Department of Education programs. The "Race to the Top" is funded by this Recovery Act.

<sup>107</sup> See <http://www.corestandards.org/>.

<sup>108</sup> See <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>.

awarded \$700 million under this initiative.<sup>109</sup> The Student Aid and Fiscal Responsibility Act of 2009 increases Pell Grant<sup>110</sup> maximums based on the Consumer Price Index, reforms certain student loans, and provides for school renovation and repair.<sup>111</sup> The Education Jobs Fund provided an additional \$10 billion to states and school districts, to hire (or avoid laying off) teachers and other educators.<sup>112</sup>

Today, the Department operates programs that touch on every area and level of education. It's elementary and secondary programs annually impact nearly 16,000 school districts and approximately 49 million students attending more than 98,000 public schools and 28,000 private schools.<sup>113</sup> Department programs also provide grant, loan, and work-study assistance to more than 15 million postsecondary students.<sup>114</sup>

## Arguments to Abolish the Department of Education

### *Unconstitutional*

Many people maintain that the Department is an expensive failure wrought with abuse, bureaucratic paperwork, and expensive investments with no return. Opponents argue that the Department is an unconstitutional infringement of states' rights and an intrusion on family prerogatives as education is not an enumerated power of the federal government. Under this view, the Tenth Amendment<sup>115</sup> grants states and local governments jurisdiction over education. Richard Lyman, President of Stanford University who testified at the congressional hearings on creating the cabinet-level department, noted "the two-hundred-year-old absence of a Department of Education is not the result of simple failure during all that time. On the contrary, it derives from the conviction that we do not want the kind of educational system that such arrangements produce."<sup>116</sup> Since education would have been a relevant and important concern to the Framers of the Constitution, many contend that the Constitution's silence on the matter was a deliberate measure to keep Congress out of the classroom. Furthermore, adherents of this view point to President Thomas Jefferson's second inaugural address in 1805<sup>117</sup> and

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<sup>109</sup> For an assessment of Florida's involvement, see Florida Report Year 1, available at <http://www2.ed.gov/programs/racetothetop/performance/florida-year-1.pdf> and Florida Report Year 2, available at <http://www2.ed.gov/programs/racetothetop/performance/florida-year-2.pdf>.

<sup>110</sup> Pell Grants are federally-funded, need-based financial aid packages for college students. For more information, see <http://www2.ed.gov/programs/fpg/funding.html>.

<sup>111</sup> The Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) included, as Title II, the "SAFRA Act" (also known as the "Student Aid and Fiscal Responsibility Act"). The SAFRA Act ended the federal government's role in subsidizing financial institutions that make student loans through the Federal Family Education Loan (FFEL) Program under Part B of Title IV of the Higher Education Act of 1965 (HEA), and correspondingly expanded the Federal Direct Student Loan Program administered by the Department of Education under Part D of Title IV of the HEA.

<sup>112</sup> P.L. 111-226. This was modeled closely on the State Fiscal Stabilization Fund created by the 2009 Recovery Act.

<sup>113</sup> As of April 2013, see Overview: Budget Office – U.S. Department of Education, U.S. Department of Education, available at <http://www2.ed.gov/about/overview/budget/index.html>. The previous year, the Department served 14,000 school districts and 56 million students attending roughly 99,000 public schools and 34,000 private schools. See Overview: The Federal Role In Education, U.S. Department of Education, available at <http://www2.ed.gov/about/overview/fed/role.html>.

<sup>114</sup> Overview: Budget Office – U.S. Department of Education, U.S. Department of Education, available at <http://www2.ed.gov/about/overview/budget/index.html>.

<sup>115</sup> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Tenth Amendment, United States Constitution.

<sup>116</sup> Richard Lyman, as quoted in Glenn Beck and Kevin Balfe, *Broke: The Plan to Restore Our Trust, Truth and Treasure*, Threshold Editions 2012, p. 305.

<sup>117</sup> "[R]evenue thereby liberated may, by a just repartition of it among the States and a *corresponding amendment of the Constitution*, be applied in time of peace to rivers, canals, roads, arts, manufactures, education, and other great objects within each State" (emphasis added), Thomas Jefferson, Second Inaugural Address (March 4, 1805), available at <http://www.bartleby.com/124/pres17.html>.

his sixth annual message to Congress in 1806,<sup>118</sup> in which he clearly states that education is not within the congressional purview.

### *Financial Expenditures*<sup>119</sup>

Federal appropriations for education increased 389 percent from FY 1965 to FY 2011, after adjustment for inflation (table 1 and figure 1),<sup>120</sup> although the rate of change was unstable during those 46 years. From FY 1965 to FY 1975, appropriations increased by 145 percent, but then decreased 17 percent from FY 1975 to FY 1985. Thereafter, education appropriations generally increased: by 30 percent from FY 1990 to FY 2000 and by 64 percent from FY 2000 to FY 2011.

Between FY 1990 and FY 2000, after adjustment for inflation, federal appropriations increased for three of the four major categories reported: elementary and secondary education (by 55 percent), other education (by 26 percent), and research at educational institutions (by 34 percent) (table 1 and figure 1).<sup>121</sup> During the same period, funding for postsecondary education decreased by 14 percent.

From FY 2000 to FY 2011, after adjustment for inflation, federal appropriations showed a net increase of 34 percent for elementary and secondary education, 227 percent for postsecondary education, 53 percent for other education, and 15 percent for research at educational institutions. In FY 2009, appropriations for elementary and secondary education were at a record-high level (\$172.8 billion in FY 2012 dollars) due to funds from the American Recovery and Reinvestment Act of 2009. For FY 2012, federal program funds were estimated to be \$79 billion for elementary and secondary education, \$69.9 billion for postsecondary education, and \$9.6 billion for other education programs.<sup>122</sup>

After adjustment for inflation, off-budget support (federal support for education not tied to appropriations) and nonfederal funds generated by federal legislation (e.g., private loans, grants, and aid) showed an increase of 134 percent between FY 1990 (\$19.3 billion in FY 2012 dollars) and FY 2000 (\$45.3 billion in FY 2012 dollars).<sup>123</sup> In FY 2011, these same funds totaled \$112.1 billion in FY 2012 dollars, an increase of 148 percent over FY 2000. In FY 2012, these funds were an estimated \$121.2 billion.

In FY 2011, federal appropriation for education totaled \$185.2 billion in current dollars.<sup>124</sup> The U.S. Department of Education provided about 51 percent (\$93.8 billion) of this total. Funds exceeding \$1 billion also came from the U.S. Department of Health and Human Services (\$29.3 billion), the U.S. Department of Agriculture (\$20.4 billion), the U.S. Department of Veterans Affairs (\$10.3 billion), the U.S. Department of Defense (\$6.8 billion), the U.S. Department of Labor (\$6.1 billion), the National Science Foundation (\$5.3 billion), the U.S. Department of Energy (\$3.1 billion), the U.S. Department of Homeland Security (\$2.1 billion), and the National Aeronautics and Space Administration (\$1.8 billion).

In FY 2011, educational institutions (including local education agencies, state education agencies, and degree-granting institutions) received an estimated 62 percent (\$115.7 billion in current dollars) of

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<sup>118</sup> “[T]he great purposes of the public education, roads, rivers, canals, and such other objects of public improvement as it may be thought proper to add to the constitutional enumeration of federal powers. ... I suppose an amendment to the constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the constitution, and to which it permits the public moneys to be applied” (emphasis added), Thomas Jefferson, Sixth Annual Message (December 2, 1806), available at <http://millercenter.org/president/speeches/detail/3495>.

<sup>119</sup> *Digest of Education Statistics: 2012*, National Center for Education Statistics at the Institute of Education Sciences, December 2013, available at [http://nces.ed.gov/programs/digest/d12/ch\\_4.asp](http://nces.ed.gov/programs/digest/d12/ch_4.asp).

<sup>120</sup> See also Table 419. *Federal support and estimated federal tax expenditures for education, by category: Selected fiscal years, 1965 through 2012*, available at [http://nces.ed.gov/programs/digest/d12/tables/dt12\\_419.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/tables/dt12_419.asp?referrer=report).

<sup>121</sup> Id.

<sup>122</sup> See Table 421. *Federal on-budget funds for education, by level/educational purpose, agency, and program: Selected fiscal years, 1970 through 2012*, available at [http://nces.ed.gov/programs/digest/d12/tables/dt12\\_421.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/tables/dt12_421.asp?referrer=report).

<sup>123</sup> See note 120.

<sup>124</sup> See Figure 20. *Percentage of federal on-budget funds for education, by agency: Fiscal year 2011*, available at [http://nces.ed.gov/programs/digest/d12/figures/fig\\_20.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/figures/fig_20.asp?referrer=report). See also Table 420. *Federal on-budget funds for education, by agency: Selected fiscal years, 1970 through 2011*, available at [http://nces.ed.gov/programs/digest/d12/tables/dt12\\_420.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/tables/dt12_420.asp?referrer=report).

appropriation program funds for education.<sup>125</sup> Another 21 percent (\$39.8 billion) was used for postsecondary student support. Other education organizations (including Head Start programs at child care centers, Job Corps and other vocational programs, adult basic education programs, and federal programs at libraries and museums) received 11 percent (\$21.3 billion) of appropriation funds for education. Federal institutions received 4 percent (\$6.8 billion). Other recipients (including American Indian tribes, private nonprofit agencies, and banks) received 1 percent (\$1.6 billion) of education-appropriated funds.

Of the \$99.1 billion in current dollars spent by the U.S. Department of Education in FY 2012, about 30 percent (\$29.8 billion) went to local education agencies (school districts) and 7 percent (\$7.2 billion) to state education agencies.<sup>126</sup> About 27 percent (\$26.7 billion) went to postsecondary institutions and another 29 percent (\$29.1 billion) to postsecondary students. Smaller percentages (totaling 6 percent) went to federal institutions, other education organizations, and other recipients. Local education agencies received a smaller percentage of U.S. Department of Education expenditures in FY 2012 than in FY 2011 (30 percent vs. 32 percent).

The 2012 presidential budget included over \$68 billion for the Department; 2013, \$ 54 billion; and 2014, \$53.8 billion.<sup>127</sup> The actual appropriation for the Department was \$40.55 billion in 2012 and \$39.85 billion in 2013.<sup>128</sup> Its discretionary budget of \$68.4 billion (including discretionary Pell Grant funding)<sup>129</sup> is the third largest of all 15 cabinet-level agencies, behind only the Department of Defense and the Department of Health and Human Services.

Table 1.  
Federal appropriation spending for education by category: Selected Fiscal Years 1965-2011<sup>130</sup>

[in billions of constant fiscal year 2012 dollars]					
Year	Total	Elementary/ secondary	Post-secondary	Other education	Research at educational institutions
1965	\$38.9	\$14.2	\$8.7	\$2.7	\$13.2
1975	95.2	43.4	31.3	6.6	14.0
1980	94.4	43.8	30.4	4.2	15.9
1985	78.6	34.0	22.5	4.2	17.8
1990	89.1	38.0	23.6	5.8	21.8
1995	105.9	49.7	26.0	7.0	23.2
2000	115.8	59.0	20.2	7.4	29.2
2005	172.7	81.5	45.6	8.2	37.5
2011	189.9	78.8	66.1	11.3	33.6

Figure 1.  
Federal appropriation for education, by level or other education purpose: Selected years, 1965-2012<sup>131</sup>

<sup>125</sup> See Table 422. *Estimated federal support for education, by type of ultimate recipient and agency: Fiscal year 2011*, available at [http://nces.ed.gov/programs/digest/d12/tables/dt12\\_422.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/tables/dt12_422.asp?referrer=report).

<sup>126</sup> See Table 423. *U.S. Department of Education outlays, by type of recipient and level of education: Selected fiscal years, 1980 through 2012*, available at [http://nces.ed.gov/programs/digest/d12/tables/dt12\\_423.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/tables/dt12_423.asp?referrer=report). See also Figure 21. *Percentage of U.S. Department of Education outlays, by type of recipient: Fiscal year 2012*, available at [http://nces.ed.gov/programs/digest/d12/figures/fig\\_21.asp?referrer=report](http://nces.ed.gov/programs/digest/d12/figures/fig_21.asp?referrer=report).

<sup>127</sup> Education Department Budget History Table: FY 1980-FY 2014, available at <https://www2.ed.gov/about/overview/budget/history/edhistory.pdf>.

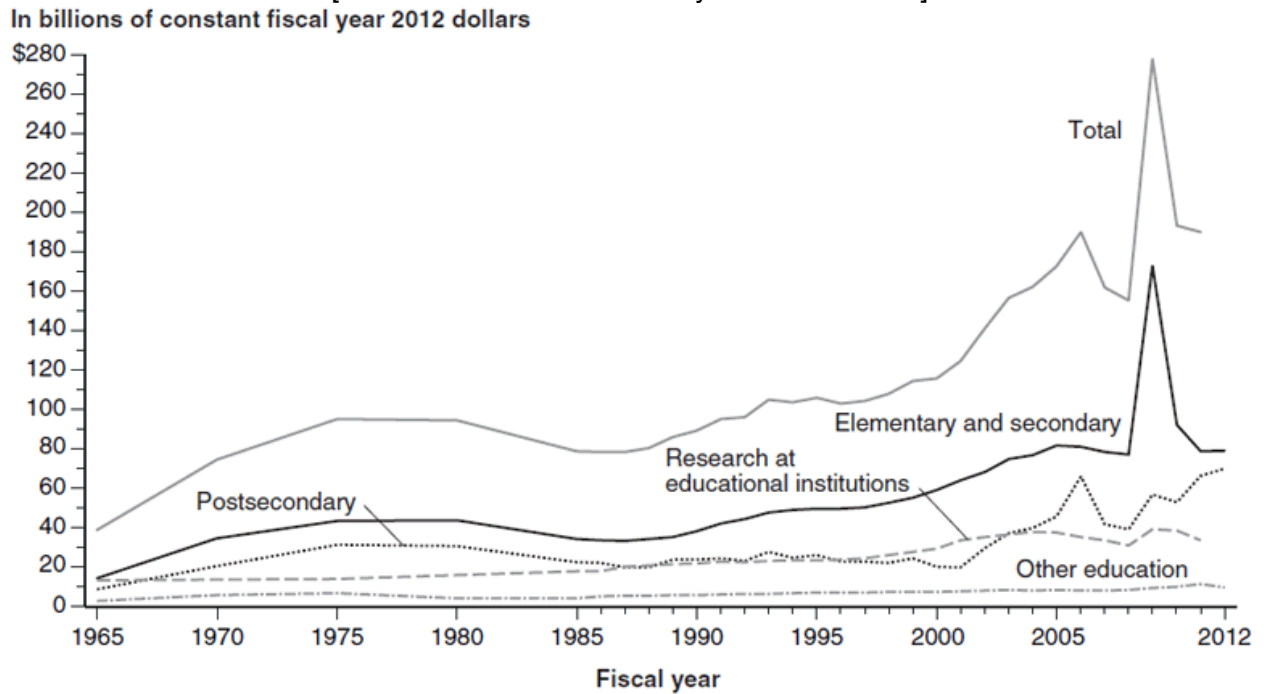
<sup>128</sup> Id.

<sup>129</sup> Overview: Budget Office – U.S. Department of Education, U.S. Department of Education, available at <http://www2.ed.gov/about/overview/budget/index.html>.

<sup>130</sup> Detail may not sum to totals due to rounding. U.S. Department of Education, Budget Service and National Center for Education Statistics, unpublished tabulations. U.S. Office of Management and Budget, *Budget of the U.S. Government, Appendix*, various FYs. National Science Foundation, *Federal Funds for Research and Development*, various FYs.

<sup>131</sup> The increase in postsecondary expenditures in 2006 resulted primarily from an accounting adjustment. Data for research at educational institutions are estimated for 2010 and 2011 and are not available for 2012. Data for elementary and secondary, postsecondary, and other education are estimated for 2012. U.S. Department of Education, Budget Service, unpublished tabulations. U.S. Department of Education, National Center for Education Statistics, unpublished tabulations. U.S. Office of Management and Budget, *Budget of the U.S. Government, Appendix*, fiscal years 1967 through 2013. National Science Foundation, *Federal Funds for Research and Development*, fiscal years 1967 through 2011.

[in billions of constant fiscal year 2012 dollars]



### Market-Driven Alternative

Some also argue that federal higher education financial aid assistance actually has the unintended consequence of increasing college and university tuitions by increasing demand. Therefore, without federal loans, Pell grants, and other aid programs, economic theory suggests that tuition sticker prices will drop and the private market will respond with additional loans, scholarships, and human capital contracts.<sup>132</sup> Furthermore, some international studies suggest that large-scale, free-market education (school choice programs) outperforms government-driven education.<sup>133</sup>

### Testing Data

Opponents often point to spending and testing data to support their arguments against the Department. For example, federal education spending more than quadrupled between 1973 and 2004; however, the National Assessment of Educational Progress (NAEP) reading scores remained unchanged and math scores rose just 1 percent (for American 17-year-olds).<sup>134</sup> Comparing per-pupil spending and testing data shows that higher spending does not lead to higher test scores. Despite Massachusetts' high-spending policy and Idaho's low-spending policy, both states' students performed very well on the NAEP. Low-spending South Dakota (42nd in per-pupil spending) boasts the eighth best math scores and ninth best reading scores. The highest per-pupil spending is in Washington, D.C., but students there have the worst scores nationally.<sup>135</sup> However, it is important to note that in the most recent NAEP results, known as the *Nation's Report Card, 2013 Mathematics and Reading* show some improvement nationally from the previous testing in 2011 among fourth- and eighth-grade students in mathematics, and among eighth-grade students in reading.<sup>136</sup> Overall, there have been gains in both subjects since the assessments in the early 1990s.<sup>137</sup>

<sup>132</sup> Gary Wolfram, *Making College More Expensive: The Unintended Consequences of Federal Tuition Aid*, Policy Analysis No. 531, Cato Institute (January 2005), available at <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa531.pdf>.

<sup>133</sup> Andrew J. Coulson, *Markets vs. Monopolies in Education: A Global Review of the Evidence*, Policy Analysis No. 620, Cato Institute (September 2008), available at <http://www.cato.org/sites/cato.org/files/pubs/pdf/pa620.pdf>.

<sup>134</sup> Mona Charen, "Wanting to Abolish the Department of Education Is Not Radical," *National Review Online*, June 11, 2010, available at <http://www.nationalreview.com/articles/229936/wanting-abolish-department-education-not-radical/mona-charen>.

<sup>135</sup> Id.

<sup>136</sup> For the complete report, visual aids, and other details, see "The Nation's Report Card, A First Look: 2013 Mathematics and Reading," available at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2014451>.

<sup>137</sup> Latest Reading, Mathematics Assessments Show Progress, News Release, National Assessment Governing Board, available at <http://www.nagb.org/newsroom/naep-releases/2013-reading-math.html>.

### *Fraud, Abuse, and Waste*

Fraud, abuse, and mismanagement plagued the Department's programs and incentives. As revealed by a 1991 Senate investigation, student loan program flaws, ineptitude, and neglect cost taxpayers billions of dollars.<sup>138</sup> Annual losses from student loan programs rose from \$1.14 billion in 1983 to \$4.8 billion in 1990, totaling over \$23 billion (all adjusted for inflation) in eight years. In 1994, the Department admitted to losing between \$4.7 billion and \$6.2 billion (adjusted for inflation) annually to waste, fraud, and loan defaults in its college aid programs.<sup>139</sup> Then-Education Secretary Richard Riley called the department's financial management "worse than lax."<sup>140</sup> A 2001 GAO report revealed that there were \$22 billion of student loans in default.<sup>141</sup> A major fraud operation was uncovered in 2002, in which a Department career employee forged more than \$600,000 of false overtime claims and stole hundreds of thousands of dollars' worth of the Department's electronics equipment.<sup>142</sup> Federal student loan fraud continues at high levels. In a 2005 student loan fraud case, owners of a company called the CSC Institute stole \$4.3 million of its \$13 million Pell Grants awards.<sup>143</sup>

In their last semi-annual report to Congress, the Department stated that it closed 74 fraud/corruption investigations in the previous six months.<sup>144</sup> This resulted in securing over \$44.8 million in settlements, fines, restitutions, recoveries, and savings; taking criminal actions against school officials; and issuing 15 audit-related reports with program-improvement recommendations. In their previous report, the Department reported securing over \$33.3 million during that period's investigations.<sup>145</sup> Opponents of the Department claim that these recoveries represent only a small fraction of the Department's fraud, corruption, and losses, which highlight the pervasiveness of these problems. Despite the criticism of the Department's failures, few corrective measures were taken and Congress continued to place regulations and funding requirements on state education systems.

### *Scope*

Another common complaint against the Department is its bureaucratic scope, including extra paperwork for teachers and administrators, "dubious" curricula mandates, and multifarious extra-educational functions. Federal guidelines now cover topics such as how schools discipline students, the content of sex education courses, and the gender of textbook authors.<sup>146</sup> Many of the programs listed on the Department's website bear little to no relation to schooling, including the Spinal Cord Injuries Model Systems Program,<sup>147</sup> the Small Business Innovation Research Program,<sup>148</sup> Protection and Advocacy of Individual Rights,<sup>149</sup> Life Skills for State and Local Prisoners,<sup>150</sup> and the Institute for International Public Policy.<sup>151</sup> Federal education legislation has ballooned beyond the scope of its original intent. For example, the Elementary and Secondary Education Act was designed to aid low-income and minority populations in 1965, but has since morphed into the No Child Left Behind law, which affects every

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<sup>138</sup> Jason DeParle, "Panel Finds Wide Abuse in Student Loan Program," *New York Times*, May 21, 1991, available at <http://www.nytimes.com/1991/05/21/us/panel-finds-wide-abuse-in-student-loan-program.html>

<sup>139</sup> Michael Winerip, "Billions for School Are Lost in Fraud, Waste, and Abuse," *New York Times*, February 2, 1994, available at <http://www.nytimes.com/1994/02/02/us/billions-for-school-are-lost-in-fraud-waste-and-abuse.html?pagewanted=all&src=pm>.

<sup>140</sup> *Id.*

<sup>141</sup> See <http://www.gao.gov/products/GAO-03-922T>

<sup>142</sup> Neely Tucker, "Federal Worker Admits to Theft; Education Dept. Funds Financed Gifts for Family," *Washington Post*, January 31, 2002.

<sup>143</sup> John Shiffman, "Pair Accused of Taking \$4.3 Million From Grants," *Philadelphia Inquirer*, July 1, 2005, available at [http://articles.philly.com/2005-07-01/news/25432692\\_1\\_alexander-lebed-laundering-adult-education-classes](http://articles.philly.com/2005-07-01/news/25432692_1_alexander-lebed-laundering-adult-education-classes).

<sup>144</sup> From U.S. Department of Education, Office of Inspector General, Semiannual Report to Congress, No. 67, available at <http://www2.ed.gov/about/offices/list/oig/semiann/sar67.pdf>. Issued in December 2012, this report covered April 2013 – September 2013.

<sup>145</sup> U.S. Department of Education, Office of Inspector General, Semiannual Report to Congress, No. 66, available at <http://www2.ed.gov/about/offices/list/oig/semiann/sar66.pdf>.

<sup>146</sup> CATO Handbook for Congress: Policy Recommendations for the 108<sup>th</sup> Congress, CATO Institute, p. 298

<sup>147</sup> See <http://www2.ed.gov/programs/sci/index.html>

<sup>148</sup> See <http://www2.ed.gov/programs/sbir/index.html>

<sup>149</sup> See <http://www2.ed.gov/programs/rsapair/index.html>

<sup>150</sup> See <http://www2.ed.gov/programs/lifskills/index.html>

<sup>151</sup> See <http://www2.ed.gov/programs/iegpsiipp/index.html>

student in the country.<sup>152</sup> The Department currently operates 119 assistance programs, as catalogued by the General Services Administration.<sup>153</sup>

### *National Uniformity*

Further, opponents contend that national uniformity prevents states and local governments from addressing particular issues unique to their schools. Education policies built at the local level encourage parent involvement. This, many reason, would allow for exemplary programs to be models in practice for other school districts instead of forcing the same design on all schools. Congress cannot effectuate meaningful change in the individual classrooms as it is impossible for them to address or understand local needs for every school.

### Arguments for Maintaining the Department

Proponents argue that allowing local governments and parents to control what their children are taught in school will result in a national patchwork of education, complete with regional bias, that will continue the cycle of miseducation. Additionally, they claim the Department's massive subsidies have allowed millions of children to receive a better and higher education than state programs and private loans alone could support.

The Department itself points out that while its "programs and responsibilities have grown substantially over the years, the Department itself has not."<sup>154</sup> The Department boasts the smallest staff of all 15 Cabinet-level departments despite its third-largest budget and claims to make over \$120 billion a year in new loans.<sup>155</sup> Furthermore, the Department asserts that its administrative costs account for only 2 percent of the discretionary budget and that it "delivers about 99 cents on the dollar in education assistance to States, school districts, postsecondary institutions, and students."<sup>156</sup>

Despite whatever shortcomings the Department may effectuate, advocates need only defend its constitutionality. This mentality stems from the belief that the Department achieves meaningful goals despite the unpopularity, balance sheets, or bureaucratic processes that all large departments endure. Therefore, the primary – although some would argue only – defense the Department needs is to argue for its legality. This argument relies on the Commerce Clause<sup>157</sup> and the Taxing and Spending Clause,<sup>158</sup> which proponents claim grant the federal government constitutional power and funding power over education.

### **Effect of Proposed Changes**

HM 285 urges Congress to abolish the United States Department of Education. Without federal involvement, education policies, reforms and requirements would be determined by the states, local governments, and parents.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

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<sup>152</sup> Mona Charen, "Wanting to Abolish the Department of Education Is Not Radical," National Review Online, June 11, 2010, available at <http://www.nationalreview.com/articles/229936/wanting-abolish-department-education-not-radical/mona-charen>.

<sup>153</sup> General Services Administration, Catalog of Federal Domestic Assistance, Department of Education Programs, available at <https://www.cfda.gov/index?s=program&mode=list&tab=list&tabmode=list>.

<sup>154</sup> Overview: The Federal Role In Education, U.S. Department of Education, available at <http://www2.ed.gov/about/overview/fed/role.html>.

<sup>155</sup> Id.

<sup>156</sup> Id.

<sup>157</sup> The Commerce Clause grants Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," Article 1, Section 8, Clause 3 of the U.S. Constitution.

<sup>158</sup> The Taxing and Spending Clause grants Congress the power to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States," Article 1, Section 8, Clause 1 of the U.S. Constitution.

B. SECTION DIRECTORY:

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**