

**Higher Education in the United States:
Government as Investor, Regulator, and Central Planner**

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Throughout its nearly 250 year old history, the United States federal government has had no formal authority over the American education system. The US Constitution's Tenth Amendment, in a single sentence, establishes the foundational principle of US federalism: any authority not explicitly delegated to the federal government shall instead fall to state and/or local governments, so long as these lower bodies have not been explicitly barred from such authority (U.S. Const. amend. X). As the constitution does not delegate any responsibility or authority over a public education system, the nation instead has 50 distinct (if similar) systems of education across its 50 states. Despite this fact, governmental institutions at every level wield the lion's share of power and influence over higher education, serving as the investors, planners, and regulators. At every major inflection point in the history of American higher education, the federal government has been the driving force laying the groundwork of our system, expanding it, reforming it, and regulating it—and often, it is specifically the executive branch shaping these policies. Historically, this relationship has tended to be a mutually beneficial, net positive one; however, it relies on good actors working within the government to preserve, protect, and defend our institutions. When this requirement is not met, bad actors have extraordinary power to dismantle the system from within.

In its nascent stage, the American system of higher education was an adapted model largely based on the Oxford and Cambridge ideal: an elite, residential, Christian collegiate system (Thelin, 2011). These early institutions were predominantly funded by colonial/state tax appropriations, a small number of large philanthropic donations, and student tuition. The private nature of these institutions was affirmed via Supreme Court cases such as *Trustees of Dartmouth College v. Woodward* (1819), ruling that a private university's charter is effectively a binding, corporate contract, and that

even a state government may not alter it—if a state wanted a public university, they would have to charter it themselves. Yet with public opinion about higher education institutions (HEIs) being mixed at best, state legislators struggled to justify reliable funding for them (Lucas, 2006). Thus, the number of HEIs and access to them remained limited.

Public opinion, ever fickle, would shift as the 19th century rolled on. Many felt that HEIs had grown stagnant, their focus on Greece and Rome stymying scientific expansion that was growing quickly in Europe (Nevins, 1962). With state and private institutions failing to adapt quickly enough, the federal government stepped in: in 1862, President Abraham Lincoln signed the Morrill Land-Grant Act into law. Every state in the union would have the right to claim 30,000 acres of public land per member of Congress that they could sell, with the proceeds earmarked for chartering colleges focused on “agriculture [and] the mechanic arts” (National Archives, 2021). This cleared two of the largest hurdles to expanding public higher education in the US: the sale of the land granted to the states provided the necessary funding, and the stipulation that these schools be focused on agriculture and mechanics shifted curricula from the classical model to a practical one. Higher numbers of public HEIs also democratized access to higher education, granting access to working class families who previously could not afford it.

The Morrill Act of 1862 also set a precedent for later federal interventions in the higher education system: while expanded access and a more modern curriculum surely benefits the people at large, the provisions of the law also advanced interests of the federal government. Much of the land granted through this act did not actually belong to the United States, but to native tribes, who would not benefit at all from the land sale. This would allow the government to not only educate a new class

of skilled workers to further economic development, but to continue its westward expansion and settlement, giving the government dominion over more land and whatever riches it contained (Nash, 2019). Having originally been vetoed in 1859—prior to the start of the Civil War—by Democratic President James Buchanan (Randall, 2020), a provision was added to the final version of the bill, stipulating that any state in “a condition of rebellion or insurrection against the government of the United States” would be excluded (Act of July 2, 1862, 1862, Provision Sixth). This condition, perhaps an attempt to sway public opinion in the South against the Confederate government, would not be particularly successful; the war would drag on until the Union overpowered and out-strategized the Confederacy. However, it would set a standard: the first Morrill Act may have been the first instance of conditional spending, a legal concept by which intended recipients of federal money must comply with certain rules and regulations in order to receive funds. Following the end of the Civil War, Congress would pass a second Morrill Act in 1890. The second Morrill Act would again target southern states in particular: while they would now be eligible for the land grants, they would be required to either (a) demonstrate that race was not a factor considered in admissions, or (b) establish separate but equal colleges for Black students. In most cases, these states would opt for the latter, leading to the establishment of what are now known as Historically Black Colleges and Universities (HBCUs).

The next instance of the federal government reshaping the higher education system would come half a century later, in the form of the Servicemen’s Readjustment Act of 1944, or GI Bill. In the midst of World War II, the Department of Labor estimated that the end of the war would result in 15 unemployed million men and women who had served in the war (National Archives, 2022). Eager to avoid another economic collapse and the resulting depressed national mood, the American Legion

would craft and advocate for the passage of the GI Bill, which would provide extended unemployment benefits for qualified veterans. One of these benefits was the provision of up to \$500 per year to cover tuition, fees, books, etc. for veterans attending school at an approved institution. This led to explosive growth of higher education in America: veterans accounted for 49% of college admissions in 1947, and 7.8 million would attend college in the 12 years that followed (Glessner, 2017).

Initially, whether an HEI was “approved” for VA funds or not was determined by State Approving Agencies (SAAs) – agencies which did not exist, but which the law “requested” states establish for this purpose (Dortch, 2016), respecting the 10th Amendment’s concept of reserved powers. However, the fractured system that resulted from this request led to an estimated ~6,000 for-profit schools springing up across the country to take advantage of these funds (Whitman, 2017). As a result, when Congress passed the Veterans Readjustment Assistance Act of 1952 (extending similar benefits to Korean War veterans), it included a directive to the Commissioner of Education to publish a list of agencies and associations deemed to be “reliable authorities” on institutional quality (Whitman, 2017). These agencies, initially created by HEIs themselves as a voluntary means of quality assurance via peer review, became the new standard for academic accreditation, eventually becoming a gatekeeper of institutional quality assessment (Brittingham, 2009).

Just a few years later, in October 1957, the USSR would launch *Sputnik I*, marking the first time humankind put a man-made object in Earth’s orbit and the beginning of the Space Race, and shocking scientists and government officials alike in the United States (Divine, 1993). Public sentiment was one of crisis (Divine, 1993), and the US was eager to catch up to and surpass the USSR’s scientific prowess. With college enrollment still on the rise in the wake of the GI Bills, Congress set out to turn

this into a strategic advantage, drafting the National Defense Education Act of 1958 (NDEA). The law used a two-pronged approach to spur scientific research in the US: first, by providing funding for graduate fellowships to hire more teachers of subjects of national security interest (e.g., mathematics, engineering, foreign languages), and second, by providing funding to HEIs to establish low-interest loan programs for students via the National Defense Student Loan program. This latter program, established under Title II, marked the first instance of the federal government providing loans to students pursuing higher education and paved the way for future federal student aid programs.

The NDEA was successful in accomplishing its goals; data from the National Center for Science and Engineering Statistics (2021) show a nearly 285% increase in doctorate recipients in the 15 years following the law's enactment (see [Appendix A](#)). However, tucked away in Title X, Section 1001 (f) were two provisions that would launch immense controversy: firstly, individuals could not receive funds unless they sign an affidavit that they do not believe in, nor belong to or support any organization that believes in, the overthrow of the United States government; and secondly, that they would have to take a loyalty oath to the United States (Braiterman, 2012). These provisions marked a shift in how conditional spending was utilized in matters related to higher education funding; rather than requiring positive compliance with regulations limiting discrimination, as the second Morrill Act did, it excluded individuals and organizations on the basis of ideology. This was seen by many as an affront to academic freedom, with four of the eight Ivy League universities outright refusing the funding in protest, and the remaining four publicly disavowing the provisions (Disclaimer Affidavit, 1962). By the time the disclaimer affidavit was repealed by President John F. Kennedy in 1962, 153 schools had spoken out in protest (Disclaimer Affidavit, 1962).

After Kennedy's assassination in 1963, Lyndon B. Johnson was elevated to the Presidency, and went about carrying out his Great Society agenda. Among the many initiatives aiming to end poverty and racial injustice was the Higher Education Act of 1965 (HEA). This law brought sweeping changes to the American higher education system, especially when it comes to funding: it created the modern federal student aid system, with need-based educational opportunity grants, guaranteed student loans, the federal work-study program, funding programs for urban land-grant institutions and HBCUs; as well as various smaller, targeted programs, such as TRIO (Flannery, 2015). It also formalized the gatekeeper role of accrediting agencies, requiring accreditation by a nationally recognized accrediting agency (or affiliation with at least three other HEIs so accredited) for fund eligibility (*Higher Education Accreditation*, 2013). The 1972 Education Amendments added Title IX, prohibiting sex-based discrimination in any institution receiving HEA funding. During the Obama Presidency, the Department of Education (ED) expanded its interpretation of Title IX to help protect victims of sexual harassment and assault, then later to prohibit discrimination on the grounds of gender identity (Ali, 2010; Lhamon & Gupta, 2016), though these provisions have since been rescinded.

In the years since the Great Society era, many significant legislative actions have tied federal funding to compliance with new regulations: Title VI of the Civil Rights Act of 1964 prohibited federal funding recipients from discrimination based on race, color, or national origin (U.S. Department of Justice, 2025); Section 504 of the Rehabilitation Act of 1973 prohibited discrimination on the basis of disability status. Yet as demonstrated with the NDEA's Disclaimer Affidavit, conditional funding can also be used to exclusionary or discriminatory ends. Title IV of the USA PATRIOT Act amended FERPA to allow the Department of Justice to demand (via court order) the

disclosure of student records without student or parental consent, and did not require such requests to be documented (Warwick, 2005). It also required schools to use the Student and Exchange Visitor Information System (SEVIS) to collect, track, and monitor information about international students.

Notably, many of the conditions tied to the federal funds mentioned throughout this paper are subject to the interpretation of various executive departments of the federal government, rather than legislative or judicial bodies: the Department of Education determines which accrediting agencies to recognize; the Departments of Education and Justice determine who/what is protected by Title IX; the Department of Justice determines what organizations are considered “subversive” and therefore excluded from NDEA funds, to name a few. In the past decade, particularly under the first and second Trump Presidencies, this authority has been repeatedly wielded as a stick to coerce HEIs into compliance with the administration’s authoritarian agenda. In February 2017, the Departments of Justice and Education issued their own “Dear Colleague” letter rescinding the Obama-era guidance protecting transgender students (Battle & Wheeler, II, 2017). More recently, at the beginning of his second term, Trump issued a series of executive orders, including one which directed federal agencies to contractually obligate federal contractors and grantees—including HEIs—to certify that they do “not operate any programs promoting DEI” (Exec. Order No. 14173, 2025). In response to these executive orders, federal agencies responded by compiling a list of keywords to scan for in any research receiving federal grants—among them, words like “bias,” “discrimination,” “equality,” “LGBT,” “pollution,” “race,” “sex,” and “women”—in order to rescind the related grants (Yourish et al., 2025).

The second-term Trump administration has also targeted free speech on college campuses; Executive Order 14188 (2025) urges the Department of Education to compel HEIs to “monitor for

and report activities by alien students and staff” for any speech or action deemed anti-semitic. Within weeks, the Trump administration announced it would withhold \$400 million of research grants appropriated by Congress for Columbia University (Otterman & Stack, 2025), and ED sent letters to 60 HEIs, warning of legal action and loss of funding due to perceived anti-semitism in the protests following Israel’s brutal response to the October 7, 2023 attack (U.S. Department of Education, 2025a). To settle the dispute, Columbia made an agreement with the administration, with concessions including a \$200 million payment to the federal government, revelation of admissions data and “all disciplinary actions involving student visa-holders resulting in expulsions or suspensions,” and increased oversight of the university’s Middle Eastern, South Asian, and African Studies Department (Davis & Pickering, 2025; Bose & Biazzo, 2025).

Despite countless legal challenges against the Trump administration’s actions—many of them resulting in a loss for the administration—the march toward a more authoritarian America continues as if unimpeded. While it has yet to take effect, another Trump executive order—number 13679 (2025)—has ordered Secretary of Education Linda McMahon to “take all necessary steps to facilitate the closure of the Department of Education,” leading to the termination of approximately 50% of the Department’s workforce, with most cuts hitting the Offices of Federal Student Aid, Special Education & Rehabilitative Services, English Language Acquisition, Well-Rounded Education, and Civil Rights (Turner, 2025). This order tests the most extreme limits of executive power in the United States; while there is limited precedent to draw from, it is generally understood that abolishing a statutory executive agency requires action from both the President and Congress (Relyea, 2008). While Congress has yet to take action in response to the executive order, the Department of Education announced in

November that it had signed agreements to transfer administrative responsibilities to the Departments of Labor, Interior, Health and Human Services, and State (U.S. Department of Education, 2025b).

In light of the myriad ways in which the federal government has shaped and reshaped the American higher education system, it is difficult to reach a conclusion other than that the Tenth Amendment has failed to check the federal government, particularly the executive branch. While the federal government still lacks any formal authority over education in America, the legislative and judicial branches' abdication of their checks and balances responsibilities has resulted in *de facto* executive authority. The very same federalist framework that shaped this nation, that led to the democratization of education, that spurred research which drove American innovation, that transformed a set of colonies into a global superpower, now provides authoritarian political actors with an extraordinary lever to coerce and punish ideological dissent. Where we go from here remains to be seen; but pulling back from the brink of totalitarianism will require similarly extraordinary pushback from the governmental bodies that have not yet been stripped of their power. The future of higher education—and education in general—has never been more uncertain.

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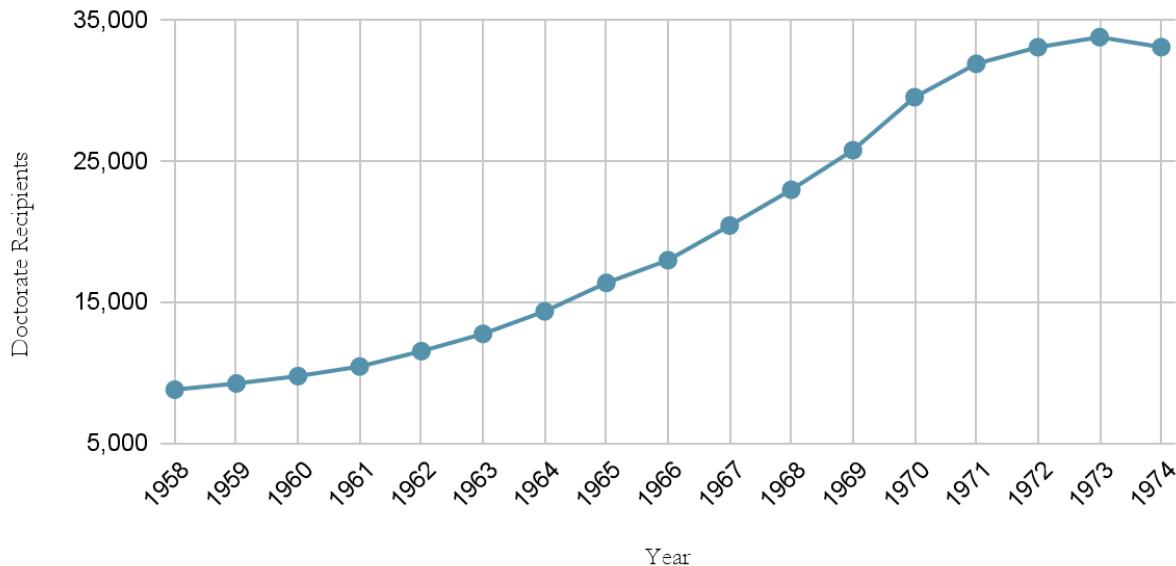
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Appendix A

Increase in Doctorate Recipients following the NDEA

Figure 1

Doctorate Recipients by Year



Note. The data are from *Survey of Earned Doctorates* [Research doctorate recipients from U.S. colleges and universities: 11958-2021], by the National Center for Science and Engineering Statistics, 2021, <https://ncses.nsf.gov/surveys/earned-doctorates/2021>.