



# Legal issues in higher ed

Presented by Mackenzie Wilfong



# Topics

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Regulatory Maelstrom

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Borrowers Defense  
and the  
FAFSA roll-out

3

Cases to watch

# Effective July 1, 2024

- Financial value transparency and gainful employment (88 FR 70004)
  - Data due to DOE July 31, 2024
  - DOE will now calculate and disclose D/E rates and a new "Earnings Premium" for every Title IV-participating program on a new "program information website."
- Financial responsibility (88 FR 74568)
  - No transcript holds for courses paid by federal financial aid and ample career services
- Professional licensure changes (88 Fed. Reg. 74646)
  - Students apply from out of state now more than just notice using the chart.



# More regs to come

- FERPA (NPRM May 2024)
- Foreign Gifts and Contracts (NPRM June 2024)
- Cybersecurity Standards for IHE (NPRM Oct. 2024)
- Debt Collection Practices (NPRM Oct. 2024)
- Title IX final rules (March 2024 maybe)
- Web Accessibility final rules (2024 maybe)
- PWFA final rules (any day now)
- FLSA final rules (any day now)

We expect NPRM in October 2024 for the following negotiated topics:

State Authorization, Distance Education, R2T4, Case Management, and TRIO programs, third-party servicers, and student loan deferment and forbearance

# Debt cancellation

Debt cancellation through existing avenues remains a top Biden Administration priority. ED has led an aggressive education and outreach campaign encouraging borrowers to avail themselves of existing options for forgiveness

So far, ED has cancelled more than \$127 billion in federal student loans:

- \$42B – SAVE retroactive forgiveness and fixing income debt repayment errors
- \$51B – Public Service Loan Forgiveness
- \$11.7B – Discharge for borrowers who have a total and permanent disability
- \$22.5B – Borrower Defense to Repayment



## Borrower's Defense Claims

- Borrowers initiate the process by filling out an application with FSA. ED then sends the claims to colleges to give them an opportunity to respond before ED adjudicates the claims.
- In early August 2023 ED sent emails to Presidents and Directors of Financial Aid to make them aware of the claims
- Emails came from DoNotReply@cod.ed.gov
- First batch of notices was for claims July 22, 2022–November 1, 2022.
- ED can seek recoupment if the institution does not respond due to preponderance of the evidence standard.
- Institution has 60 days to respond – I've heard no extensions are granted
- The claims are all over the map (failure to secure employment, classes don't transfer, false advertising, lack of career services support, inadequate faculty, accreditation issues, etc.)
- Institutions need to respond and address each student's allegation(s), if an allegation is without merit deny it directly with evidence that you attach.
- In order to do any analysis of the claims I requested that the Director of Financial Aid provide me a spreadsheet with each student's dates of term, date of last enrollment, date of completion/graduation, amount of loans per term for every term including subsidized and unsubsidized, and amount of refunds for those same terms.

# FAFSA issues

Students apply for financial aid in fall, the (DOE) receives those forms, sends them to colleges, and colleges are able to quickly send students their offers.

Problems include ED using inaccurate formula, parent ID verification (undocumented parents), and slow ISRs

Schools do not have the ED information to send out Federal financial aid packets and are extending deadlines beyond May 1



# Cases

*Bhattacharya v. UVA*

*Dai v. Louisiana Tech*

Legacy of overrule *Chevron v. Natural Resources Defense Council*

Liberty University Clery Act fine



# Question Time

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# Thank You

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