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insights

REGUCATION January 22, 2026 | 43 minutes | Tres Cleveland, Brandt Hill, Lorrie Hargrove, Evan Moltz, Anna S. Knouse, Alexander G. Spanos, Karolyn E. Eilertsen

Higher Education Litigation Summary: January 2026

We are pleased to share the new 2026 edition of Thompson Coburn's Higher Education Litigation Summary, your resource for timely legal updates on key rulings and ongoing cases shaping the higher education sector.

Highlights in this edition include:

Updates on the PPA litigation, including the Department of Education's newly published guidance announcing the settlement and its decision to no longer enforce the owner-entity signature requirement in 34 C.F.R. § 668.14(a)(3)(ii). An update on the recent Borrower Defense to Repayment hearing, where the court denied an extension and confirmed that the January 28, 2026, deadline for ED to issue borrower defense decisions remains in effect for schools on the Exhibit C list.

Bare Minimum Rule

The Bare Minimum Rule is a federal regulation issued by ED during the Biden Administration that restricts the provision of federal student aid under Title IV to gainful employment programs if the length of the program exceeds the minimum number of hours that a state requires for licensure.

Overview

In October 2023, as part of a broader final rulemaking, ED promulgated the so-called "Bare Minimum Rule" (BMR"). Effective July 1, 2024, the BMR restricted Title IV aid to only gainful employment ("GE") programs whose length did not exceed the minimum number of hours a state mandates for licensure in a given field. If a program's length exceeded a state's minimum hours, students are ineligible for Title IV aid for that program. The BMR departed from ED's prior "150% Rule" which restricted Title IV aid to GE programs that did not exceed 150% of a state's minimum hours. Two lawsuits challenged the BMR under the APA: *360 Degrees Education, LLC v. U.S. Dep't of Ed.*, No. 24-cv-00508 (N.D. Tex.); *American Massage Therapy Association v. U.S. Dep't of Ed.*, No. 24-cv-01670 (D.D.C.).

Status

In *360 Degrees*, the Northern District of Texas entered a preliminary, nationwide injunction in June 2024. The court held that the BMR was likely "arbitrary and capricious," emphasizing that it "represents a sea-change from thirty years of established practice." The next month, ED announced that it would revert to enforcing the 150% Rule while the injunction remained in place.

Meanwhile, in *American Massage*, plaintiff AMTA and ED filed cross motions for summary judgment in November 2024. However, the case has been stayed since February 2025 and remains stayed through January 21, 2026. In a July 2025 status report, ED explained that it intends to reconsider the BMR through a negotiated rulemaking process. Following ED's stated plans to undergo negotiated rulemaking, the parties in *360 Degrees* in August 2025 jointly requested a continued stay of the case, pending resolution of the rulemaking.

TC's Take

or now, the BMR remains enjoined nationwide and will not be implemented in its current form. The fate of the BMR will likely involve one or more of the following actions:

- ED could reconsider the BMR through negotiated rulemaking, the outcome of which would likely resolve the ongoing litigation.

- ED could withdraw its defense of the BMR and rescind the BMR.

Congressional legislation could formally nullify the BMR and reinstate the 150% Rule.

Borrower Defense to Repayment

Congress, in 1994, created a process through which students borrowing Title IV loans can assert a defense to repayment of their loans and apply to ED for a loan discharge if their institutions deceived them or closed. This is known as Borrower Defense to Repayment ("BDR"). 20 U.S.C. § 1087e(h). Over the last decade, under each Administration, ED has fashioned new BDR regulations, first in 2016 (Obama), then in 2019 (Trump), and finally in 2022 (Biden). Each iteration created new criteria and rules to replace the prior version, creating uncertainty for student borrowers and institutions alike. Lawsuits challenging each set of regulations remain pending today.

2016 BDR Rule – Overview

ED under the Obama Administration published a new BDR rule in 2016, effective July 1, 2017. The 2016 BDR Rule set new standards for student borrowers to assert defenses to repayment of loans based on institutional misconduct. After granting an initial wave of loan discharges under the 2016 BDR Rule, ED under the first Trump Administration quickly paused adjudications. That led to a class of student borrowers suing ED in 2019 for delaying and failing to process their claims under the 2016 BDR Rule. *Sweet v. Cardona*, No. 19-cv-3674(N.D. Cal.), No. 23-15049 (9th Cir.). In June 2022, a settlement was reached between ED and a class of students who attended 151 schools identified as having likely engaged in substantial misconduct, resulting in $6 billion in debt discharges for these students. Four schools opposed the settlement, but the court approved it, finding ED had authority to settle the students' claims under 20 U.S.C. § 1082(a).

2016 BDR Rule – Status

Three of the four schools appealed the settlement approval, but in November 2024, the Ninth Circuit dismissed their appeal, ruling the schools lacked prudential standing. One of the appealing schools, Everglades College, petitioned for rehearing en banc. In May 2025, the Ninth Circuit denied the petition. In October 2025, Everglades College petitioned the Supreme Court for a writ of certiorari. No. 25-492 (U.S.). ED's response to the petition is currently due on January 21, 2026.

Meanwhile, back in district court, ED in November 2025 moved for an 18-month extension of its January 28, 2026 deadline to adjudicate the BDR applications of borrowers who were *not* part of the class when the settlement was reached in June 2022 but who later submitted applications. ED explained that the size of this "post-applicant class" was larger than anticipated and it cannot process their applications by January 2026. On December 11, 2025, the district court held a hearing on ED's motion. At that hearing, the judge issued a bench ruling largely denying the requested extension. The January 28, 2026, deadline for ED to issue decisions on borrower defense claims remains in effect for schools on the "Exhibit C list," and will automatically be approved if not adjudicated by that date.

At this time, we do not see any indication in the court docket that ED has sought or is seeking to appeal the Court's denial of the extension request.

2019 BDR Rule – Overview

In September 2019, ED published the 2019 BDR Rule, which went into effect July 1, 2020. 84 Fed. Reg. 49788. Among other things, the 2019 BDR Rule revised standards under the 2016 BDR Rule for the assertion and resolution of borrower defense claims. The 2019 BDR Rule also established a three-year limitations period for borrowers to raise their claims as part of collection proceedings against them.

2019 BDR Rule – Status

New York Legal Assistance Group sued ED in 2020, claiming the 2019 BDR Rule was arbitrary and capricious, and that the three-year limitations period was procedurally invalid because it was not a "logical outgrowth" of ED's notice of proposed rulemaking that preceded it, and thus violated the APA. *NYLAG v. McMahon*, No. 20-cv-01414 (S.D.N.Y.), No. 21-0888 (2nd Cir.). In 2021, the district court granted summary judgment to ED on the arbitrary and capricious claims, but ruled that the limitations period violated the APA. The district court entered judgment but instead of severing and vacating the limitations provision, remanded to ED "for further proceedings." NYLAG appealed to the Second Circuit.

The Second Circuit in 2024 partially remanded to the district court and directed it to consider whether it could sever and vacate the limitations provision while leaving the rest of the 2019 BDR Rule intact. In March 2025, the district court severed and vacated the limitations provision in an amended judgment. NYLAG then reinstated its appeal from the district court's ruling denying its arbitrary and capricious claims.

Following the Second Circuit's request, in September 2025 ED argued that NYLAG's appeal is "moot" because the 2019 BDR Rule was "codified" by Congress in the One Big Beautiful Bill ("OBBB"). NYLAG, however, contended in response that OBBB merely "restored" and "revived" the status quo as of July 1, 2020; in other words, NYLAG

argues that Congress did not "ratify" and "codify" the 2019 BDR Rule into law, such that its challenge to the 2019 BDR Rule as arbitrary and capricious remains a "live controversy." ED on November 25, 2025 filed a supplemental letter brief responding to NYLAG, and requesting that the Second Circuit either vacate the district court's amended judgment or, alternatively, remand the matter to the district court. ED maintained that the 2019 BDR Rule was "codified" by Congress in OBBB, noting that Congress's decision to incorporate the 2019 BDR Rule into statute by reference had the effect of placing it beyond the reach of arguments challenging it as arbitrary, capricious, or contrary to law under the APA.

2022 BDR Rule – Overview

In November 2022, ED published a final BDR Rule ("2022 BDR Rule"). The 2022 BDR Rule created a new adjudication system that provided for ED's assessment of borrower defenses to repayment in administrative proceedings before the borrower's default, and further, provided for ED's assessment of similarly-situated borrowers' defenses on a group basis. The 2022 BDR Rule also established new closed-school loan discharge provisions.

In February 2023, Career Colleges & Schools of Texas ("CCST") challenged the 2022 BDR Rule's borrower defense adjudication and closed-school loan discharge provisions. *Career Coll. & Schs. of Texas. v. U.S. Dep't of Ed.*, No. 23-cv-00433 (W.D. Tex.), No. 23-50491 (5th Cir.), No. 24-413 (U.S.). The district court denied CCST's motion for a preliminary injunction, but the Fifth Circuit reversed in April 2024 and enjoined the challenged provisions on a nationwide basis.

2022 BDR Rule – Status

In October 2024, ED petitioned the Supreme Court to review the Fifth Circuit's injunction ruling, which the Supreme Court in January 2025 agreed to hear in part. ED in May 2025 informed the Supreme Court that it intended to defend the 2022 BDR Rule.

However, on August 8, 2025, the parties requested to dismiss the petition in light of the passage of the OBBB. OBBB provided in Section 85001(a) that borrower defense to repayment provisions of the 2022 BDR Rule "shall not be in effect" for loans that originate before July 1, 2035, and further provided in Section 85001(b) that "any regulations relating to borrower defense to repayment that took effect on July 1, 2020, are restored and revived as such regulations were in effect on such date." On August 11, 2025, the Supreme Court affirmed dismissal.

A more comprehensive analysis of OBBB's impact on BDR is available here.

However, the case is not over. On December 26, 2025, the parties submitted a joint status report to the district court, providing that by January 30, 2026, CCST will file a motion for leave to amend its complaint. The parties are continuing to confer on whether ED will oppose the motion for leave to amend.

TC's Take

For now, BDR claims are not being processed under the 2022 BDR Rule, as it remains enjoined. Earlier rules (2016 and 2019) are in effect for cases depending on when the claim was filed. Borrowers can still apply for relief and their claims will be processed under older regulations; however, the timing of when a decision will be reached on the claims is uncertain and will likely take several months, if not years. As for the separate litigation challenging the 2019 Rule (previously in the 2nd Circuit) and the 2022 BDR rule (previously in the 5th Circuit), the analysis of OBBB's effect on both rules is likely to continue for some time and is worth monitoring.

DEI

The Trump Administration has made the elimination of DEI practices one of its main priorities, launching a multifront attack through executive orders, agency directives and guidance, grant terminations, and investigations into higher education institutions' practices. It has rested its efforts on an expansive reading of the Supreme Court's landmark decision striking down affirmative action in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023) ("*SFFA*"). While the question in *SFFA* was about consideration of race in college admissions, the Supreme Court broadly declared that "[e]liminating racial discrimination means eliminating all of it." The Trump Administration has invoked that language to justify its efforts to remove consideration of race from all aspects of higher education, from admissions to employment to scholarships, and everything in between, sparking widespread litigation.

DEI Executive Orders – Overview

In early 2025, President Trump issued two executive orders targeting diversity, equity, and inclusion (DEI) initiatives: Ending Radical and Wasteful Government DEI Programs and Preferencing; Ending Illegal Discrimination and Restoring Merit-Based Opportunity ("DEI Executive Orders").

The DEI Executive Orders directed federal agencies to excise DEI practices from federal government, including by terminating "equity-related" grants. As soon as agencies began implementing the directives, litigation commenced.

The first case challenging the DEI Executive Orders is *National Assoc. of Diversity Officers in Higher Educ. et al.* v. *Donald J. Trump, et al.*, No. 25-cv-00333 (D. Md.), No. 25-1189 (4th Cir.). Plaintiffs include higher education officials,

staff, and the City of Baltimore. The district court issued a preliminary injunction, finding likely First and Fifth Amendment violations, but the Fourth Circuit stayed that injunction pending appeal, meaning that the DEI Executive Orders remain in effect. The Fourth Circuit held oral argument on September 11, 2025. A ruling is imminent.

Additional challenges to the DEI Executive Orders are pending in other jurisdictions. In *National Urban League v. U.S. Dep't of Ed.*, No. 25-cv-471 (D.D.C.), the district court denied the plaintiffs' motion to enjoin the DEI Executive Orders, citing both plaintiffs' lack of standing and failure to establish a likely constitutional violation. ED's motion to dismiss is pending.

In *San Francisco Aids Foundation v. U.S. Dep't of Ed.*, No. 25-cv-01824 (N.D. Cal.), No. 25-4988 (9th Cir.), the district court granted, in part, the plaintiffs' motion for a preliminary injunction, prohibiting ED and other agencies from enforcing the DEI Executive Orders against them. The government appealed to the Ninth Circuit. Oral argument is set for February 10, 2026.

In *Chicago Women in Trades v. U.S. Dep't of Ed.*, No. 25-cv-2005 (N.D. Ill.), No. 25-2144 (7th Cir.), the district court granted the motion for preliminary injunction but limited it to Department of Labor and specific grants. The government's Seventh Circuit appeal is pending with oral argument set for January 30, 2026.

DEI Executive Orders – Status

As of now, the DEI Executive Orders remain in force except as noted above.

Dear Colleague Letter – Overview

Following the DEI Executive Orders, ED released a February 14, 2025 Dear Colleague Letter (DCL) to institutions and other entities receiving federal funding. The DCL directed recipients to cease using race preferences and stereotypes as a factor in their admissions, hiring, promotion, scholarship, prizes, administrative support, sanctions, discipline, and other programs and activities. It broadly interpreted the *SFFA* decision to apply to all aspects of educational life. To implement the DCL, on February 27, 2025, ED launched an "End DEI" online portal for the public to report discrimination at institutions, which would then be used as a basis for federal investigation. ED subsequently released a "Frequently Asked Questions" ("FAQ") document regarding the DCL, which again broadly interpreted the *SFFA* decision, giving specific examples of discrimination. Finally, on April 3, 2025, ED announced a certification requirement, requiring state education departments to certify their compliance with antidiscrimination laws.

Several lawsuits were filed seeking to vacate the DCL, the FAQ, the End DEI portal, and the certification requirement. In *Am. Federation of Teachers v. U.S. Dep't of Ed., et al.*, No. 25-cv-00628 (D. Md.), No. 25-2228 (4th Cir.), the district court vacated the DCL and certification requirement. The government has appealed; its opening brief is due on January 22, 2026.

In *National Education Assoc. v. U.S. Dep't of Ed.*, No. 25-cv-91 (D. N.H.), the district court entered a preliminary injunction blocking the DCL, FAQs, End DEI Portal, and certification requirement as to plaintiffs and their affiliates only. Summary judgment briefing is finished, but the court has not yet ruled.

In *NAACP v. U.S. Dep't of Ed., et al.*, No. 25-cv-1120 (D.D.C.), the district court entered a partial injunction blocking the certification requirement. Plaintiff filed an amended complaint and the government's motion to dismiss is pending.

Dear Colleague Letter – Status

The DCL and the certification requirement have been vacated under the APA. The End DEI portal is offline.

DOJ Guidance re: Unlawful Discrimination – Overview

On July 29, 2025, the Department of Justice issued a memorandum to all federal agencies regarding Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination ("DOJ Guidance"). The DOJ Guidance reiterated the Trump Administration's position that various DEI practices by funding recipients likely violate federal antidiscrimination laws, including Title VI, Title VII, and Title IX, and identified "Best Practices" as "non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls." The DOJ Guidance was notable because it emphasized that funding recipients may not use "unlawful proxies" – practices that rely on "neutral criteria that function as substitutes for explicit consideration of race, sex, or other protected characteristics."

DOJ Guidance re: Unlawful Discrimination – Status

DOJ's Guidance is not binding, and courts have acknowledged that. Many courts simply are not following it, viewing many aspects of it as conflicting with case law precedent or otherwise not addressing it. For example, a preliminary injunction was entered preventing DHS from withholding grants when the DOJ Guidance was cited as a basis for the action. *County of Santa Clara v. Noem*, No. 25-cv-08330 (N.D. Cal.).

Racial and Ethnic Preferences Under SFFA – Overview

Since the *SFFA* decision, several cases have been filed challenging federal statutes and programs related to higher education that give preferences to persons based on race or ethnicity. Plaintiffs in these cases, like the Trump Administration, have interpreted *SFFA* broadly to apply not only to admissions, but to all areas of institutional life. We highlight a few examples below.

In ***State of Tennessee v. Dep't of Educ.***, No. 25-cv-270 (E.D. Tenn.), the State of Tennessee and Students for Fair Admissions sued ED in June 2025, alleging the Hispanic-Serving Institutions (HSI) program is unconstitutional. In the HSI program, Congress directed ED to award funds to colleges whose undergraduate student body is comprised of at least 25 percent Hispanic students. 20 U.S.C. § 1101a(a)(5). Plaintiffs argue the statutory quota is unconstitutional under *SFFA*; the complaint's first sentence states that "The Department of Education cannot discriminate based on race or ethnicity—even when Congress orders it to." Although DOJ announced that it would not defend the lawsuit, the Hispanic Association of Colleges and Universities intervened as a defendant and has moved for judgment on the pleadings on several grounds, including lack of standing and mootness. Briefing on the motion is ongoing.

In ***American Alliance for Equal Rights***, No. 25-cv-04207 (D.D.C.), the American Alliance for Equal Rights, an organization founded by Edward Blum, who also founded SFFA, filed a suit in December 2025 against the Hispanic Scholarship Fund, a nonprofit organization that provides millions of dollars in scholarships to Hispanics and Latinos pursuing higher education, alleging discrimination claims based on 42 U.S.C. § 1981, Title VI, and state law. AAFER alleges that the HSF's Scholars Program "flatly bars all non-Hispanic students," and requires any applicant to have at least one Hispanic grandparent from certain identified countries. AAFER also alleges that it has non-Hispanic members who are "ready and able to apply for the program today but are ineligible to apply because of their ethnicity." AAER seeks an injunction barring HSF from knowing or considering the ethnicity of applicants, and "equitable relief to undo HSF's past discrimination."

In ***Students Against Racial Discrimination*** *v. The Regents of the University of California*, No. 8:25-cv-00192 (C.D. Cal.), Plaintiffs, a nonprofit organization formed and existing "for the purpose of restoring meritocracy in academia," sued the University of California ("UC") system and its individual institutions and Chancellors, alleging the UC system uses unlawful racial preferences in student admissions, discriminating in favor of Black and Hispanic applicants and against Asian American and white applicants, in violation of Title VI, 42 U.S.C. § 1981, the Equal Protection Clause, and California law. On December 16, 2025, the district court **dismissed** the organization's claims against the UC medical schools for lack of standing, dismissed claims arising under Section 1981 and the Equal Protection Clause, and dismissed claims against the Chancellors of the various UC schools. The court, however, determined that other claims (involving the nine undergraduate UC campuses and five law schools) were sufficiently pled. The case thus continues to be litigated.

Racial and Ethnic Preferences Under *SFFA* – Status

The *SFFA* decision has cast a large wake. Lawsuits attacking racial and ethnic preferences will continue to be filed, with lower courts grappling as to how wide *SFFA*'s application should be. Guidance from the Supreme Court on this breadth is needed.

TC's Take

For the next three years, the Administration's anti-DEI efforts are here to stay. A circuit split on the validity of the DEI Executive Orders, prompting Supreme Court review is likely. Until then, the DEI Executive Orders remain effective as to ED and other federal agencies (except DOL).

While the Administration continues to fight for the reinstatement of the DCL and its implementation devices, it did not seek a stay of the district court's vacatur of the DCL and certification requirement, despite having received such a stay on the DEI Executive Orders. It appears the government is shifting its focus elsewhere, heavily relying on the *SFFA* decision on its own, the DEI Executive Orders that remain in effect, and the DOJ Guidance, which is not binding and thus not subject to legal attack, but which states the position of the Administration on antidiscrimination law.

While courts work through the various legal challenges to the government's DEI policies, there is no question that the Administration will continue its efforts to rollback DEI initiatives in higher education. The government maintains several powerful enforcement tools at its disposal, including initiating investigations and suspending Title IV funding, and it has shown no hesitation in taking aggressive action against institutions that do not conform to its policies. If an institution has no appetite for litigation with the government and does not want to jeopardize continued access to federal funds, following the DEI Executive Orders, DCL, DOJ Guidance, and related agency guidance may simply be the palatable option, at least for the next three years, irrespective of lower court decisions.

False Claims Act

The False Claims Act ("FCA") is a key enforcement mechanism for policing the use of federal funds, including in the higher education sector where it is frequently applied to alleged misrepresentations tied to Title IV student aid compliance and violations of the HEA. Recent challenges to the constitutionality of the FCA's qui tam, or whistleblower, provisions have introduced uncertainty into this enforcement landscape, with potentially significant implications for colleges and universities.

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Overview

The constitutionality of the *qui tam*, or whistleblower, provision of the False Claims Act ("FCA") has been the subject of several recent challenges.

In *United States ex rel. Zafirov v. Florida Medical Associates LLC*, No. 19-cv-01236 (M.D. Fla.), originally filed in 2019, the defendants challenged whether whistleblowers could represent the federal government in FCA actions—where the government has not intervened in the case—without violating the Constitution's Appointments Clause. In September 2024, the district court agreed, issuing its decision declaring the *qui tam* provision of the FCA unconstitutional, raising significant questions about the future of whistleblower litigation. The government appealed to the Eleventh Circuit (11th Cir. 24-13581, 24-13583).

In *U.S. ex rel. Penelow et al. v. Janssen Products LP*, the whistleblowers alleged that defendants violated the FCA, the federal Anti-Kickback Statute, and various state False Claims Acts in connection with the sale of certain medications. In 2016, the government declined to intervene in the lawsuit. The case went to a jury, which found in favor of the whistleblowers. The award, including treble damages, totaled $1.64 billion. The defendants appealed to the Third Circuit arguing, among other things, that the *qui tam* provision of the FCA was unconstitutional.

In *U.S. ex rel. Phillips et al. v. Los Angeles Film School, LLC et al.*, two relators/whistleblowers, who were former management executives for Los Angeles Film School, LLC, allege that two institutions violated federal gainful employment requirements and incentive compensation bans, despite certifying compliance with those provisions. The government declined to intervene and the complaint was recently unsealed. Because the government has not intervened, the case presents the potential for the defendants to challenge the constitutionality of the False Claims Act's *qui tam* provisions should they face an unfavorable outcome.

Status

In *Zafirov*, the government's appeal to the Eleventh Circuit is pending and oral argument is currently scheduled for December 8, 2025.

In *Penelow*, the parties have filed their briefs and the Court's review is underway. The DOJ filed an intervenor and amicus brief arguing that the qui tam provision is, in fact, constitutional.

In *U.S. ex rel. Phillips et al. v. Los Angeles Film School, LLC et al.*, on May 6, 2025, the United States declined to intervene "at this time," and the court partially unsealed the case. The relators filed an **amended complaint** on October 14, 2025. All defendants moved to dismiss the amended complaint on November 14, 2025, but no ruling has been made.

If appellate courts agree that the *qui tam* provision is unconstitutional, it could either foreclose FCA whistleblower claims altogether (if a broader application), at least in that circuit, or substantially limit them to cases only where the government intervenes (a narrower application). The ruling could have broad implications, particularly in higher education, where FCA suits are prevalent. Depending on the outcome of the litigation, Congress could seek a legislative fix due to the substantial federal revenue generated by these suits.

DOJ's Civil Rights Fraud Initiative

On May 19, 2025, the United States Deputy Attorney General circulated a memo within the Department of Justice announcing the launch of the Civil Rights Fraud Initiative, a new effort aimed at leveraging the FCA and its *qui tam* provisions to pursue entities that "defraud the United States by taking its money while knowingly violating civil rights laws." Co-led by the Fraud Section of the Civil Division and the Civil Rights Division, this initiative marks a shift in the government's traditional FCA enforcement and could expose corporations, universities, and nonprofits to civil *and* criminal investigations. The announcement encourages private citizens to file *qui tam* suits, which will likely be filed under seal as required, allowing the government time to investigate and decide whether to intervene.

TC's Take

Recent constitutional challenges place the future scope of whistleblower-led FCA litigation in question, with courts considering whether private relators may pursue claims absent government intervention. Depending on how broadly any adverse ruling is applied, FCA actions could be substantially narrowed or limited to government-intervened cases. At the same time, the Department of Justice is defending the statute and signaling continued reliance on the FCA through expanded enforcement initiatives, underscoring the need for institutions to closely monitor appellate outcomes and potential legislative responses. Specifically, the DOJ is actively soliciting whistleblowers in areas of importance for the administration like DEI and certain funds/grants provided to institutions from foreign governments.

Gainful Employment Rule

The Biden-era Gainful Employment rule ("GE Rule") sets forth metrics that ED uses to measure whether programs are preparing students for "gainful employment in a recognized profession" under the Higher Education Act of 1965, as amended ("HEA"). If a program does not meet the metrics, it may lose eligibility for Title IV funding. The cosmetology school community brought a challenge to the GE Rule that remains pending today.

Overview

In October 2023, ED under the Biden Administration published a new Gainful Employment Rule. The GE Rule uses two measures of program value: a debt-to-earnings test that ensures graduates are not left with unmanageable loan payments, and an earnings premium test that compares graduates' incomes to state averages for high school graduates. Programs failing either measure twice within three years lose Title IV eligibility. After a first failure, schools must issue a warning to students disclosing their failure to meet the criteria.

The cosmetology school community challenged the GE Rule in two separate lawsuits, which the Court consolidated. *American Association of Cosmetology Schools v. U.S. Dep't of Ed.*, No. 23-cv-01267 (N.D. Tex.); *Ogle School Management v. U.S. Dep't of Ed.*, No. 24-cv-00259 (N.D. Tex.), No. 25-11303 (5th Cir.). Plaintiffs in both cases argued the GE Rule was unlawful because Congress's definition of "gainful employment" in the HEA did not contemplate ED using debt and earnings metrics. Plaintiffs argued the GE Rule was therefore in "excess of statutory authority" and was "arbitrary and capricious," in violation of the APA.

In May 2025, in a surprising move, ED (under the Trump Administration) filed a brief defending the Biden-era GE Rule—notwithstanding that ED stripped a similar Obama-era GE rule from the books in 2019 during the first Trump Administration. ED specifically defended both the financial value transparency framework, which applies to all Title IV-participating programs at all Title IV-participating institutions of higher education, and the gainful employment framework, which applies solely to "gainful employment" programs (non-degree programs at private, non-profit and public institutions, and all programs at proprietary institutions). A detailed analysis of ED's filing is available here.

Status

In October 2025, the district court granted ED's motion for summary judgment and upheld the GE Rule. The court concluded that the GE Rule was not in excess of statutory authority because "gainful employment" reasonably means profitable employment. The court also held that the GE Rule was not arbitrary and capricious because ED's reliance on IRS earnings data and chosen debt thresholds was justified, and because ED's cost-benefit analysis—including projected taxpayer savings of $14 billion—was rational. With respect to Equal Protection Clause claims asserted by the AACS plaintiffs, the court found they had been abandoned, that the GE Rule did not unconstitutionally burden or compel speech, and that plaintiffs had no property interest in potential Title IV funding. The plaintiffs appealed to the Fifth Circuit on November 24, 2025.

Although plaintiffs are appealing the court's ruling to the Fifth Circuit, the GE Rule remains intact nationwide at this time.

TC's Take

The Fifth Circuit is widely viewed as one of the more conservative courts of appeal, and it is possible that the appellate panel may give more credit to the cosmetology appellants' statutory interpretation arguments and apply *Loper-Bright* to the GE Rule and ED's interpretation of the statute in a more critical manner than the district court. For now, however, the GE Rule remains intact nationwide. Institutions should be assessing compliance under the debt-to-earnings and earnings premium metrics and timely implement the required student warnings. However, because of OBBB and the recent AHEAD negotiated rule making session, ED's Do No Harm proposed rule will make significant changes to GE. See Thompson Coburn's materials on Do No Harm Accountability Framework here.

Grant Litigation

Institutions receive billions of dollars in grant funding from federal agencies every year. These grants fund critical scientific research, teacher development, student support programs, and other goals. Several grant programs administered by ED, NIH, and other federal agencies have been disrupted as the Trump Administration seeks to reduce federal spending on education and to eliminate DEI practices in academia. Existing grants have been terminated or discontinued and applications for new grants have been denied, leading to extensive litigation.

Teacher Grants – Overview

In the wake of the DEI Executive Orders, ED terminated over 100 grants that had been awarded to colleges during the Biden Administration to support teacher education and development. ED claimed that the grants promoted "illegal" DEI and were "inconsistent with, and no longer effectuated, Department priorities." Two lawsuits challenged the terminations. *American Association of Colleges for Teacher Education, et al. v. McMahon, et al.*, No. 25-cv-00702 (D. Md.), No. 25-1281 (4th Cir.) ("*AACTE*"); *California et al. v. U.S. Dep't of Ed.*, No. 25-cv-10548 (D. Mass.), No. 25-1244 (1st Cir.), No. 24A910 (U.S.) ("*California*").

Teacher Grants – Status

The district court in both cases entered preliminary injunctions and ordered the grants be reinstated, but ED appealed and moved to stay the injunctions pending appeal. After the First Circuit in *California* denied a stay, ED sought an emergency stay in the Supreme Court.

In April 2025, the Supreme Court granted ED's stay request and ordered the grants be re-terminated pending a future decision on the merits. The Court held that the district court likely lacked jurisdiction because the plaintiffs sought "money damages" (*i.e.*, grant funds) under a "contract" with the government. Under the Tucker Act, the

Court of Federal Claims ("CFC") has exclusive jurisdiction over claims against the United States seeking money damages owed under a contract.

Because the Supreme Court ruled only on ED's emergency stay request, it was not a "final" decision. The *California* case therefore returned to district court, and ED moved to dismiss all claims based on the same jurisdictional argument. (ED brief; plaintiffs' brief). On November 13, 2025, the district court granted ED's motion in part, finding the states' claims seeking *reinstatement* of their grants were claims for retrospective, monetary relief and thus belonged in the CFC. However, the court held that the states' claims seeking to *vacate* the termination decisions sought prospective, nonmonetary relief, and thus belonged in district court. The court will now proceed to determining the merits of these prospective relief claims.

Meanwhile, in *AACTE*, after the Supreme Court's ruling, the Fourth Circuit granted a stay of the injunction. The parties have since briefed ED's appeal of the injunction in the Fourth Circuit (ED opening brief; plaintiffs' response; ED reply). The Fourth Circuit, however, placed the appeal on hold pending its decision in two related appeals.

NIH Grants – Overview

NIH also has terminated hundreds of research grants on the basis that they promoted illegal DEI and therefore "no longer effectuated" NIH's "priorities." Several lawsuits have challenged the terminations under the APA and the Constitution, and sought injunctions to have the grants reinstated. *American Public Health Association, et al. v. National Institutes of Health, et al.*, No. 25-cv-10787 (D. Mass), No. 25-1611 (1st Cir.), No. 25A103 (U.S.) ("*APHA*"); *Commonwealth of Massachusetts, et al. v. Kennedy, Jr., et al.*, No. 25-cv-10814 (D. Mass), No. 25-1611 (1st Cir.), No. 25A103 (U.S.) ("*Commonwealth*"); *President and Fellows of Harvard College v. U.S. Dep't of Ed., et al.*, No. 25-cv-11048 (D. Mass), No. 25-2230 (1st Cir.) ("*Harvard*"); *American Association of University Professors, et al. v. U.S. Dep't of Justice, et al.*, No. 25-cv-02429 (S.D.N.Y.), No. 25-1529 (2nd Cir.) ("*AAUP*"); *Thakur v. Trump*, No. 25-cv-04737 (N.D. Cal.), No. 25-7342 (9th Cir.); *American Association of University Professors, et al., v. Trump, et al.*, No. 25-cv-07864 (N.D. Cal. 2025).

NIH Grants – Status

In *APHA* and *Commonwealth* – which were consolidated – the district court rejected NIH's Tucker Act argument and found that it had jurisdiction (*Commonwealth*; *APHA*). It further, ruled that the terminations violated the APA. After the court entered a partial final judgment for plaintiffs, NIH appealed and sought to stay the judgment. After the district court and First Circuit denied NIH's stay request, NIH filed an emergency application to stay the judgment in the Supreme Court.

In August 2025, the Supreme Court granted in part and denied in part NIH's application. A five-justice majority held that plaintiffs' APA claims challenging the terminations were "contract" claims that sought to enforce an "obligation to pay money" and thus were within the CFC's jurisdiction. The parties are now briefing the same issue regarding the Tucker Act (and other issues) in the First Circuit. (NIH opening brief; plaintiffs' response brief). Oral argument took place on January 6, 2026; a ruling is expected later this year.

Separately, the parties agreed to settle the plaintiffs' separate claims that NIH unreasonably delayed deciding applications for new grants. In a stipulation, NIH agreed to decide the applications by December 29, 2025, and plaintiffs in exchange dismissed their corresponding claims.

In *AAUP*, the plaintiffs filed a motion for preliminary injunction in April 2025. In June 2025, the district court both denied the plaintiffs' motion for a preliminary injunction and dismissed the plaintiffs' claims, after finding the plaintiffs lacked standing because the terminated NIH grants had been awarded to Columbia, not to the plaintiff organizations or researchers. The court also found the organizational plaintiffs lacked standing to sue on their own behalf because they had not demonstrated injuries to themselves. Plaintiffs appealed to the Second Circuit and filed an opening brief in October 2025. NIH's brief is due January 28, 2026. A ruling is expected later this year.

In *Harvard*, the university sued ED and other agencies over the "freeze" of $2.2 billion in funding (including NIH grants). The government paused funding after finding Harvard violated Title VI. Harvard alleged that the freeze violated the APA, the First Amendment, and Title VI. In September 2025, the district court mostly granted Harvard's motion for summary judgment. The court found that withholding Harvard's funding violated the APA, the First Amendment, and notice and hearing procedures under Title VI. The court also rejected the defendants' jurisdictional argument that Harvard's claims belonged in the CFC. The government in December 2025 appealed to the First Circuit.

In *Thakur*, a district court in September 2025 granted a motion for preliminary injunction filed by researchers at institutions whose NIH grants were terminated for DEI and other reasons, and ordered the grants be reinstated. The court found the Tucker Act inapplicable because the researchers did not *themselves* "contract" with NIH, reasoning that "non-parties to the contracts cannot bring claims in the CFC." The government appealed the injunction to the Ninth Circuit. In the meantime, NIH reinstated the grants covered by the injunction.

In *American Association of University Professors v. Trump*, a district court in November 2025 entered a preliminary injunction and ordered multiple agencies including ED to stop freezing and threatening to withhold grant funds to the University of California as part of a pressure campaign to impose a raft of policy changes on elite colleges,

finding the government infringed on their First Amendment rights and Title VI and Title IX procedural safeguards. The court has set a schedule for production of an administrative record in advance of summary judgment.

Student Grants – Overview

ED has also terminated and discontinued thousands of grants awarded to K-12 schools and to postsecondary institutions under federal grant programs that are designed to support students. Litigation over these decisions followed. *See Washington v. Dep't of Educ.*, No. 25-cv-01228 (W.D. Wash. 2025); *Council for Opportunity in Education v. Dep't of Educ.*, No. 25-cv-3491 (D.D.C.).

Student Grants – Status

In *Washington*, following its earlier preliminary injunction, which the Ninth Circuit declined to stay, a district court in Washington granted summary judgment in December 2025 to states claiming ED prematurely discontinued grants awarded to K-12 schools that support students' mental health. The court found the Tucker Act did not apply because the states did not ask the court to reinstate the grants but instead asked that ED be ordered to reconsider its decisions. The court directed ED to reconsider by December 31, 2025, but on that deadline, ED asked for more time. ED on January 7, 2026 awarded five weeks of interim funding to affected grantees and represented that it would make reconsideration decisions by February 2026.

In *Council for Opportunity in Education*, ED in summer 2025 prematurely discontinued dozens of TRIO program grants on the basis that grantees violated Title VI and Title IX, and denied applications for new grants on the same basis. A national membership association sued ED in September 2025 and moved for a preliminary injunction. Oral argument took place in December 2025. On January 16, 2026, the court granted the motion for preliminary injunction and ordered ED to reconsider the affected grants using a process that complies with all federal laws, including Title VI and Title IX.

TC's Take

The wave of grant litigation in 2025 will undoubtedly continue into 2026, with several important rulings on the horizon from appellate courts. So far the results have been mixed on the central question in all these: whether the district court or the CFC has jurisdiction to decide the claims. The Administration certainly enjoyed major successes in convincing the Supreme Court in *California* and *APHA* that claims seeking the reinstatement of terminated grants are "contract" claims seeking "money damages" that belong in the CFC. Yet plaintiffs continue to press grant-related claims in federal district courts, and in several instances have successfully convinced courts that the two Supreme Court rulings are distinguishable. Until the Supreme Court offers more clarity on the question, grant-related litigation in district courts will likely continue. As we look ahead in 2026, we anticipate another busy year for grant litigation, both in cases already filed challenging grants that were terminated in 2025 and in future cases likely to be filed as agencies continue to terminate grants moving forward.

Program Participation Agreement Signatory Litigation

All institutions must execute a Program Participation Agreement ("PPA") with the Department of Education ("ED") where signatories certify compliance with federal law for the institution to be eligible to receive Title IV funding. These certifications are particularly important because they create potential liability for signatories of the PPA. ED recently amended its regulations to broaden who must sign the PPA, including certain entities with an ownership interest in an institution (the "owner-entity signature requirement"). A Christian university successfully sued to challenge the regulation and ED subsequently issued new guidance stating that it would not enforce the owner-entity signature requirement.

Overview

Historically, ED only required that a PPA be signed by an authorized representative of an institution or the institution's operating entity. In October 2023, ED amended 34 C.F.R. § 668.14(a)(3)(ii) with respect to proprietary or private nonprofit institutions to require "an authorized representative of an entity with direct or indirect ownership of the institution" to sign the PPA "if that entity has the power to exercise control over the institution." 34 C.F.R. § 668.14(a)(3)(ii)(A)–(D) lists a number of examples of circumstances in which an entity has such power, including:

(A) If the entity has at least 50 percent control over the institution through direct or indirect ownership, by voting rights, by its right to appoint board members to the institution or any other entity, whether by itself or in combination with other entities or natural persons with which it is affiliated or related, or pursuant to a proxy or voting or similar agreement.

(B) If the entity has the power to block significant actions.

(C) If the entity is the 100 percent direct or indirect interest holder of the institution.

(D) If the entity provides or will provide the financial statements to meet any of the requirements of 34 CFR 600.20(g) or (h) or subpart L of this part.

This new rule and the owner-entity signature requirement became effective July 1, 2024. Subsequently, ED determined that 34 C.F.R. § 668.14(a)(3) required religious groups that are affiliated with schools and that have the ability to select trustees to sign the affiliated school's PPA.

Status

In May 2025, Hannibal-LaGrange University ("Hannibal-LaGrange"), a Christian school affiliated with the Missouri Baptist Convention ("MBC"), sued to challenge ED's application of 34 C.F.R. § 668.14(a) that attempted to require MBC to cosign Hannibal-LaGrange's PPA. *See Hannibal-LaGrange Univ. v. McMahon*, 2:25-cv-00042 (E.D. Mo.). ED refused to extend Hannibal-LaGrange's Pell Grant funding for a new program and refused to process Hannibal-LaGrange's PPA update without MBC's signature. The school contended in part that nonprofit institutions do not have owners, and that without an ownership interest, ED could not require that party to sign the PPA. Hannibal-LaGrange additionally argued the rule was unconstitutional and impermissibly burdened its exercise of religion in violation of the First Amendment by forcing the MBC into unwanted legal and financial involvement with the federal government. Hannibal-LaGrange filed a motion for preliminary injunction in July 2025.

After months of extending the deadline for ED to respond to Hannibal-LaGrange's motion, on January 16, 2026, Hannibal-LaGrange voluntarily dismissed its complaint pursuant to a settlement agreement.

As part of the settlement agreement, ED agreed to process and approve Hannibal-LaGrange's substantial change application for its PPA without the MBC's signature. ED agreed not to enforce the owner-entity signature requirement in 34 C.F.R. § 668.14(a)(3)(ii), but preserved its ability to rely on the financial guarantee requirements in 20 U.S.C. § 1099c(e) on a case-by-case basis as limited by 20 U.S.C. § 1099c(e)(4)(A)–(D).

Additionally, ED stated that it would not determine that a financial guarantee requirement is in the financial interest of the United States (which is necessary under 20 U.S.C. § 1099c(e)(1)) when an owner of an institution of higher education has no assets or *de minimis* assets, such as MBC. ED stated that if circumstances indicate a parent owner pretextually withdraws assets in an intentional attempt to evade liability, it may enforce a financial guarantee requirement.

Simultaneously, ED published new guidance announcing the settlement and decision to no longer enforce the owner-entity signature requirement in 34 C.F.R. § 668.14(a)(3)(ii).

TC's Take

Per ED's guidance, it will no longer enforce the owner-entity signature requirement and will instead rely on the more limited statutory authority in 20 U.S.C. § 1099(e) to require financial guarantees from institutions. We expect that ED will engage in rulemaking to rescind the owner-entity signature requirement.

Rate Cap Policy Litigation

After President Trump took office in 2025, several federal agencies announced a Rate Cap Policy of a standard 15% reimbursement of indirect "facilities and administration" or "F&A" costs (i.e., costs that are not necessarily tied to one research project but are nonetheless necessary for any given project—utility bills, building and maintaining a laboratory, purchasing technology used across many projects, etc.) associated with research grants, which is a substantial reduction from what had historically been individually negotiated. The Rate Cap Policy does not affect the other type of costs associated with research grants: direct costs attributable to a single research project, such as the salary for the researcher or the costs of the materials for that project. Litigation challenging the Rate Cap Policy ensued.

Overview

Member associations and several institutions of higher education filed several cases after federal agencies announced a new Rate Cap Policy of paying 15% across-the-board for reimbursement for facilities and administrative costs associated with grants. Reimbursement rates previously had been substantially higher. The Rate Cap Policies of NIH, HHS, and DOE have all been vacated or self-paused. The Government voluntarily dismissed its appeal in the NSF case, making the NSF policy vacated for good.

In *Massachusetts, et al. v. NIH*, the First Circuit issued a big ruling on January 5, 2026 affirming the Massachusetts district court's judgment and permanent injunction as to the Rate Cap Policy of HHS and NIH, and vacatur of the Policy under 5 U.S.C. § 706(2) of the Administrative Procedure Act. In its opinion, the First Circuit first rejected the hot jurisdiction argument that the case belonged in the Court of Federal Claims. Citing the controlling opinion in *NIH v. Am. Public Health Assoc.*, —U.S.—, 145 S.Ct. 2658, (2025), the court notes that such opinion "plainly distinguishes between challenges to agency-wide policies, which belong in district court, and challenges to the withholding of contractually awarded funds that result from those policies, which belong in the CFC." The First Circuit held that plaintiffs' challenge of the agency guidance setting the Rate Cap Policy was not a challenge to any agency withholding grant money, but rather "a precise analog to the agency-wide guidance in *APHA*" which the Supreme Court's controlling opinion concluded belonged in district court. Thus, the claims were properly filed in district court.

In addition to addressing the jurisdictional question presented, the First Circuit reached the merits of the claims, holding that the agency guidance establishing the Rate Cap Policy violated Congress's Appropriations Rider,

enacted in 2018 and reenacted in every subsequent appropriations cycle, which "direct[ed] NIH to continue reimbursing institutions for F&A cost reimbursements" and prohibited NIH from using appropriated funds "to implement any further caps on F&A cost reimbursements," and which was passed by Congress in rejecting the administration's request for Congress to institute a 10% rate of reimbursement on F&A costs. It further held that the agency guidance establishing the Rate Cap Policy violated HHS's own regulations, which required the individualized negotiation of F&A reimbursement and required that the negotiated rate generally be accepted by all federal awarding agencies.

In *Ass'n of Am. Univ., et al.. v. Dep't of Energy, et al*., No. 1:25-cv-10912 (D. Mass.), on May 15, 2025, the district court entered a nationwide preliminary injunction prohibiting the DOE from giving effect to its Rate Cap Policy with respect to any institution of higher learning until further order, and used 5 U.S.C. § 706(2) of the Administrative Procedure Act to vacate in its entirety the notice setting the rate cap. The government has appealed to the First Circuit (No. 25-1727), and while briefing is underway, there is no reason to expect that the First Circuit will enter a ruling different from that entered in the *NIH* case above.

In *Ass'n of Am. Univ., et al. v. Nat'l Science Found*., No. 1:25-cv-11231 (D. Mass.), the Court granted Plaintiffs' summary judgment motion on June 20, 2025, and vacated the NSF's 15% rate cap policy. The government appealed to the First Circuit (No. 25-1794), but on September 26, 2025, without giving a reason, the NSF filed an unopposed motion to dismiss the case. The Court did so on September 30, 2025, making the NSF Rate Cap Policy vacated permanently.

In *Ass'n of Am. Univ., et al. v. Dep't of Defense*, No. 1:25-cv-11740 (D. Mass), Plaintiffs challenged the DOD's proposed 15% rate cap policy. On October 10, 2025, the district court granted the Plaintiffs' motion for summary judgment. The district court held the Rate Cap Policy was arbitrary and capricious and contrary to law, and vacated the DOD Rate Cap Policy in its entirety under the APA. On December 9, 2025, the government appealed to the First Circuit (No. 25-2184). Briefing is underway, but again, there is no reason to expect that the First Circuit will enter a ruling here different from that entered in the *NIH* case above.

Status

None of the Rate Cap Policies are in effect currently.

TC's Take

Unless the Supreme Court accepts one of these cases and surprises us, or unless Congress is somehow convinced to pass the rate caps, the Rate Cap Policies are done.

Student and Exchange Visitor Program Litigation

This litigation arises from federal actions in May and June 2025 targeting Harvard University's ability to enroll and host international students. Harvard's successful efforts to obtain emergency relief and a preliminary injunction have preserved the status quo, but the case carries significance well beyond Harvard. At issue are the scope of executive and agency authority over SEVP certification, the procedural protections afforded to institutions, and the potential vulnerability of colleges and universities nationwide that rely on international students and scholars.

Overview

On May 22, 2025, the Department of Homeland Security (DHS) announced that it would be revoking Harvard University's certification in the Student and Exchange Visitor Program (SEVP), which gives them the ability to sponsor F and J visas for international students. DHS's announcement claimed Harvard had failed to comply with an April 16 demand for records on international students, including disciplinary, legal, and academic information.

On May 23, 2025, Harvard filed a lawsuit against DHS and several other executive branch agencies and moved for a temporary restraining order to enjoin the revocation of Harvard's certification under the SEVP. *See President and Fellows of Harvard College v. United States Department of Homeland Security, et al.*, No. 1:25-cv-11472 (D. Mass.). The complaint alleges that DHS's action violates the First Amendment, the Due Process Clause, and the APA, among other things. The same day, the court granted Harvard's motion for a TRO, allowing Harvard to continue enrolling international students and scholars as the case proceeds. The government filed a motion to dismiss the case on August 8, 2025. Harvard opposed the motion to dismiss on September 5, 2025.

On June 4, 2025, President Trump issued a Proclamation titled "Enhancing National Security by Addressing Risks at Harvard University" which suspends entry to the United States for any international student studying at Harvard University on an F or J visa. The next day, Harvard amended its Complaint and moved for a TRO as to the June 4th Proclamation. On June 5, the court granted Harvard's motion for a TRO, holding that both the TRO related to SEVP certification and the Proclamation were necessary to preserve the status quo until a hearing could be held. Both TROs were in effect until June 20, 2025 "or such earlier time as a preliminary injunction order can be issued."

Harvard then moved for a preliminary injunction on June 12. Following expedited briefing and a hearing on June 16, the district court granted the motion on June 20. The preliminary injunction enjoins defendants from implementing or otherwise enforcing the May 22 revocation of Harvard's SEVP certification, and requires the defendants to restore every Harvard international student on an F or J visa, and such international student applicants, to the position they would have been in but for the May 22 revocation notice.

On June 27, the government appealed the Court's preliminary injunction order (Appeal No. 25-1627, 1st Cir.). On August 6, 2025, Defendants stipulated that the May 22 letter will not be used to revoke Harvard's SEVP certification or Exchange Visitor Program designation.

Status

Harvard's brief in response to the government's appeal of the preliminary injunction order was filed on January 12, 2026. The government's reply is due February 9, 2026.

TC's Take

The litigation illustrates how federal actions affecting SEVP certification and international student visas can have immediate and far-reaching consequences for higher education institutions. The district court's orders clarify the availability of emergency judicial relief to maintain the status quo while legal challenges proceed. The case remains ongoing on appeal, and its resolution may inform how similar disputes involving agency authority and institutional procedural protections are addressed in the future. However, institutions should be mindful that the issuance of foreign student visas will be an area of emphasis for this administration.

Student Loan Repayment

Students collectively borrow approximately $100 billion every year in Title IV federal loans to help pay for their college educations. Congress established several loan repayment plans for student borrowers in the HEA, but left some of the details to ED to implement through regulation. As student debt amounts reached new heights, ED under the Biden Administration attempted to implement generous loan repayment (or total forgiveness) plans. These plans, however, were successfully challenged by Republican-led states. Now, ED under the Trump Administration is facing its own legal challenges to new loan repayment initiatives.

PSLF – Overview

The Public Service Loan Forgiveness ("PSLF") program was created by Congress in 2007. 20 U.S.C. § 1087e(m). PSLF's purpose is to encourage students to pursue public service by promising to discharge their loan debt if they work in a "public service job" – including employment by the government or by select nonprofit organizations – for 10 years and make 120 monthly payments under an accepted repayment plan.

In October 2025, ED published a final rule that prohibits borrowers from qualifying for PSLF forgiveness if they are employed by organizations that engage in "illegal activities," such as by "engaging in a pattern of aiding and abetting illegal discrimination." 90 Fed. Reg. 48966 (Oct. 31, 2025). ED explained that the rule would "ensure that taxpayer dollars are not misused by preventing PSLF benefits from going to individuals employed by organizations that have a substantial illegal purpose."

On November 3, 2025, several states, cities, labor unions and nonprofit organizations initiated two lawsuits against ED challenging the PSLF rule: *National Council of Nonprofits, et al.*, *v.U.S. Dep't of Ed.*, No. 25-cv-13242 (D. Mass.); *Commonwealth of Massachusetts, et al.*, *v.U.S. Dep't of Ed.*, No. 25-cv-13244 (D. Mass.). Both lawsuits argue the rule violates the APA and the First Amendment because it unlawfully rewrites PSLF eligibility as a means to advance the Administration's policy goals, contrary to Congress's intent.

PSLF – Status

In both cases, Plaintiffs' motions for summary judgment are due by February 13, 2026, and ED's consolidated oppositions to the motions are due by March 16, 2026.

SAVE Plan – Overview

In July 2023, ED published a final rule creating a new plan to expand federal student loan borrowers' eligibility for loan forgiveness. Effective July 1, 2024, the "SAVE Plan" would have made borrowers eligible for forgiveness if they made repayments for 10 years, as opposed to 20 or 25 years under prior plans, and at substantially lower amounts compared to prior plans. ED claimed authority for the SAVE Plan under 20 U.S.C. § 1087e(d)(1).

Two groups of states challenged the SAVE Plan, arguing that its early forgiveness and lower payment provisions were not authorized under the HEA and violated the APA. *State of Missouri et al. v. Biden et al.*,No. 24-cv-00520 (E.D. Mo.), No. 24-2332 (8th Cir.); *State of Kansas et al. v. Biden et al.*, No. 24-cv-01057 (D. Kan.), No. 24-03089 (10th Cir.).

SAVE Plan – Status

In *Missouri*, the district court in June 2024 preliminarily enjoined the *10-year loan forgiveness* provision but did not enjoin the *lower payment* provision. Both the states and ED appealed; the states also moved for a temporary injunction against the *entirety* of the SAVE Plan pending appeal. In August 2024, the Eighth Circuit granted the states' temporary injunction motion. ED immediately asked the Supreme Court to vacate that injunction but it was denied.

In *Kansas*, the district court also entered a preliminary injunction in June 2024 against the SAVE Plan. ED appealed, but the Tenth Circuit stayed the appeal.

The Eighth Circuit in February 2025 dismissed ED's appeal of the district court's preliminary injunction, holding that the HEA did not authorize *either* the SAVE Plan's 10-year loan forgiveness provision or the lower payment provision. ED did not challenge that ruling.

On July 4, 2025, the One Big Beautiful Act ("OBBB") was signed into law. OBBB phases out a number of federal student loan repayment plans, including the SAVE Plan.

In August 2025, the parties in *Missouri* stated that they "are currently evaluating that legislation, and discussing the effect (if any) that it may have on the remainder of this litigation." On December 9, 2025, the parties in *Missouri* reached a settlement agreement and filed a joint motion for entry of final judgment, consistent with the decision of the Eighth Circuit. The settlement provides that ED will not enforce the SAVE Plan (with minor exceptions) and will formally withdraw the rule creating it. The parties in *Kansas* are expected to request the same.

As it stands, the SAVE Plan remains enjoined, and given the settlement, the SAVE Plan is effectively off the books. ED has announced that borrowers under the SAVE Plan will be prompted to move to new repayment plans offered under OBBB.

Proposed Rule Litigation – Overview

In April 2024, in the midst of the SAVE Plan litigation, ED published a notice of proposed rulemaking ("Proposed Rule") that, like the SAVE Plan, proposed to forgive loan balances for qualifying borrowers. Eligibility for forgiveness mirrored the criteria under the SAVE Plan, but ED claimed authority to forgive loans under a different statute—20 U.S.C. § 1082(a)(6).

Proposed Rule Litigation – Status

Several states filed a lawsuit and a motion for an injunction in September 2024, challenging ED's authority for the Proposed Rule. *State of Missouri et al. v. U.S. Dep't of Ed., et al.*, No. 24-cv-01316 (E.D. Mo.). In fall 2024, like in the SAVE Plan cases, the district court enjoined the Proposed Rule, again citing ED's lack of statutory authority. ED did not appeal. Instead, in December 2024, ED withdrew the Proposed Rule. The case was then stayed while the parties "conferred about possible paths toward a negotiated resolution of this litigation."

On December 22, 2025, ED filed a motion to dismiss and asserted that the case should be dismissed, in its entirety, on mootness grounds. On January 5, 2026, the states filed an opposition to ED's motion. They argued that even though ED withdrew the Proposed Rule and is not expected to reinstate during the Trump Administration, it remained possible that under a future Administration it would seek to reinstate the same (or similar) loan forgiveness plan. The states therefore seek to continue litigating so they can obtain a final judgment declaring the Proposed Rule unlawful.

TC's Take

Major Biden-era student loan repayment proposals (including the SAVE Plan and Proposed Rule) have been blocked by courts and have been sunset by ED. The courts' rejection of these plans reflects a hostility to Executive Branch efforts to overreach in areas where Congress has not given agencies clear authority to regulate. While income-driven repayment forgiveness and PSLF remain, the Trump Administration is restructuring these programs and forgiveness opportunities are narrower than before. Legal challenge to the new PSLF rule is pending and future challenges to scale-backs are likely, making the future of student loan forgiveness deeply political and unclear.

Title IX

The 2024 Title IX Rule, which briefly broadened the definition of sex-based discrimination to encompass gender identity and sexual orientation, was vacated nationwide, and the current administration declined to appeal the decision. While enforcement priorities remain unsettled, pending Supreme Court cases concerning transgender participation in athletics are expected to shape the future interpretation and application of Title IX.

2024 Title IX Rule – Overview

On April 29, 2024, ED published a new Title IX rule ("2024 Title IX Rule"), which went into effect August 1, 2024. The 2024 Title IX Rule, among other things, expanded the definition of "discrimination on the basis of sex" to include discrimination on the basis of "sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity." Twenty-six states and private parties filed or joined lawsuits seeking to block the implementation and enforcement of the 2024 Title IX Rule. However, on January 9, 2025, the Eastern District of Kentucky vacated the 2024 Title IX Rule on a nationwide basis. ED did not appeal the Eastern District of Kentucky's decision.

2024 Title IX Rule – Status

Only one appeal related to the 2024 Title IX Rule remains pending in *Alabama v. Cardona*,No. 24-cv-00533 (N.D. Ala.) (11th Cir. 24-12444) where briefs have been submitted and review by the Court is underway.

State Laws re Transgender Sports – Overview

The Supreme Court agreed to hear two cases, ***Little v. Hecox*** and ***B.P.J. v. West Virginia***, which challenge state laws banning transgender athletes from girls' and women's sports teams. The court will decide if these state bans violate the Fourteenth Amendment's Equal Protection Clause or Title IX, which prohibits sex-based discrimination in educational programs.

State Laws re Transgender Sports – Status

In *Little v. Hecox*, the respondent challenged Idaho's Fairness in Women's Sports Act, which was preliminarily enjoined by the district court. The Ninth Circuit affirmed the injunction in part and vacated in part (as applied to non-parties). The State of Idaho petitioned the Supreme Court to hear the appeal. After certiorari was granted, respondent filed a suggestion of mootness based on her attempt to voluntarily dismiss the lower court proceedings, which is being opposed by the State of Idaho. Briefing on the suggestion of mootness is underway.

In *B.P.J. v. West Virginia*, a middle school student was banned from participating in school sports under a West Virginia law, HB 3293. B.P.J. argues that the state's categorical ban violates Title IX and the Constitution's equal protection clause by targeting transgender people. The district court ruled against B.P.J., but on April 16, 2024, the U.S. Court of Appeals for the Fourth Circuit reversed the decision. The ruling directed the lower court to grant summary judgment to the plaintiff on the Title IX claim and remanded the case for further proceedings on the equal protection claim. The decision was appealed, and the Supreme Court has agreed to hear the case.

In another case brought by the State of California against the United States Department of Justice, No. 25-cv-04863 (N.D. Cal.), California **sued** the DOJ after receiving a letter from the DOJ that demanded the state "certify in writing" that it would not implement a rule allowing students to participate in school sports based on students' gender identity. The DOJ filed a motion to dismiss which is pending. pending.

The cases could have significant implications for transgender students across the country and the interpretation of antidiscrimination laws.

TC's Take

With the 2024 Rule effectively sidelined, attention has shifted to the impact of President Trump's January 20, 2025, Executive Order 14168. The Executive Order directs the administration to define "sex" as male or female based on biological sex assigned at birth, and the Department of Education is likely to rely on this definition in future investigations, particularly in light of its decision not to appeal the nationwide vacatur of the 2024 Rule. Nonetheless, forthcoming Supreme Court decisions are expected to provide the most authoritative guidance, shaping the future regulatory and legislative landscape.

Other Cases of Interest

Other pending cases, outside the categories discussed above, raise issues relevant to postsecondary institutions. We summarize these below and will monitor them moving forward.

- *Spectrum WT, et al. v. Wendler, et al.*, No. 23-10994 (5th Cir.). The Fifth Circuit reversed a district court's denial of a motion to preliminarily enjoin West Texas A&M University officials from canceling the LGBT+ student organization's on-campus drag show on First Amendment grounds. The show was described as rated "PG-13." The school's President Wendler canceled the show, stating that the drag show did not "preserve a single thread of human dignity" which comes from being "created in the image of God." He further stated that drag shows "stereotype women in cartoon-like extremes for the amusement of others and discriminate against womanhood." The Fifth Circuit, traditionally viewed as one of the most conservative circuits in the country, held that the student group had demonstrated a substantial likelihood that the University officials had violated the First Amendment in canceling the show, as (1) the drag show implicated the First Amendment because it conveys a message of support for LGBT+ rights, (2) the university's Legacy Hall was a designated public forum because it is open to students and nonstudents for a wide variety of events, and (3) even though the university had a legitimate interest in prohibiting some expression to protect the institutional and educational mission, the cancellation could not survive strict scrutiny because it was a "concern about content," and not a concern about "the neutrality of time, place, and circumstances." The Fifth Circuit concluded that a preliminary injunction was warranted because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," and because "injunctions protecting First Amendment freedoms are always in the public interest."

- *D'Amico et al v. Consortium on Financing Higher Education et al*, No. 25-cv-12221 (D. Mass.). In August 2025, current and former students filed a **class action antitrust lawsuit** against 32 universities, along with entities involved in the higher education admissions process (COFHE, Common App, and Scoir), under the Sherman Act. The plaintiffs allege that the defendants agree to not compete for students offered admission through early decision programs, driving all students' tuition prices higher. Motions to dismiss have been fully briefed and the parties are awaiting a decision.

Archived Topics

Below reports on active cases that remain pending in the courts but have seen little activity in recent months. TC will continue monitoring these cases and will highlight important developments in future editions.

Legality of Nationwide Injunctions

"Universal" or "nationwide" injunctions are orders that broadly enjoin the enforcement of presidential executive orders on constitutional grounds. Although this form of broad relief did not exist until the early 1960s, in recent years, federal district courts have increasingly used nationwide injunctions to enjoin enforcement of executive orders that typically involve controversial political topics such as immigration, climate change, DEI programs, and healthcare. Courts issued an average of 1.5 nationwide injunctions per year against the Reagan, Clinton, and George W. Bush administrations, and 2.5 per year against the Obama administration. During President Trump's first administration, however, courts issued approximately fifty-five nationwide injunctions, and during President Biden's administration, courts issued approximately twenty-eight nationwide injunctions. Nationwide injunctions are particularly controversial because they permit a single district court judge to grant broad relief to parties that are not before the court.

In *Trump v. CASA*, 606 U.S. 831 (2025), the U.S. Supreme Court held that universal or nationwide injunctions exceed lower courts' authority and are unlawful. *Trump v. CASA* involved a challenge to President Trump's Executive Order No. 14160, titled "Protecting the Meaning and Value of American Citizenship" that sought to redefine birthright citizenship for children of non-U.S. citizens. The Supreme Court clarified that federal courts may only enter injunctions that prevent the government from enforcing a challenged statute or Executive Order against the specific plaintiffs in the case (and those with standing who the plaintiffs sue on behalf of) and cannot order relief that accrues to parties not before the court. As a result, individuals adversely affected by an unlawful statute or Executive Order must file their own lawsuits to obtain injunctive relief.

Because *Trump v. CASA* involved a constitutional challenge to an executive order rather than a challenge to an administrative agency's action under the APA, the Court's decision specifically excluded APA-based claims from its holding. The Court noted that it was not addressing whether the APA permits courts to issue preliminary injunctions or "vacate federal agency actions:"

Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. *See* 5 U.S.C. § 706(2) (authorizing courts to "hold unlawful and set aside agency action").

Accordingly, *Trump v. CASA* does not affect the use of "universal vacaturs" under the APA, which in practice may have a similar effect as a nationwide injunction by granting relief to parties not before the court.

Since the Supreme Court decided *Trump v. CASA*, several district courts have considered whether to certify a nationwide class of plaintiffs to grant relief similar to that of a universal or nationwide injunction. On the same day the Supreme Court decided *Trump v. CASA*, the CASA plaintiffs moved in the District of Maryland to certify a class and requested immediate injunctive relief. After the Fourth Circuit dismissed and remanded the case, the district court certified a class of plaintiffs and granted the plaintiffs' motion for a class-wide preliminary injunction. On October 7, the Administration filed a notice of appeal in the Fourth Circuit. *See* No. 25-2188 (4th Cir.). The government moved to hold the appeal in abeyance pending the outcome in *Washington v. Trump* and *Barbara v. Trump*.

In *Washington v. Trump*, No. 2:25-cv-0127 (W.D. Wash.), the Western District of Washington declined the individual plaintiffs' emergency motion to lift the stay that it previously entered pending appeal to rule on the plaintiffs' attempt to seek class certification, stating that the Ninth Circuit had already begun to determine the scope of the previously entered preliminary injunction. Subsequently, the Ninth Circuit upheld the scope of the universal, nationwide injunction as necessary to grant the state plaintiffs complete relief. On September 29, the Administration petitioned for a writ of certiorari in the Supreme Court seeking a review on the merits of whether Executive Order No. 14160 complies with the Citizenship Clause and its enacting statute. *See* No. 25-364 (U.S.). The case has been distributed for conference.

In *Barbara v. Trump*, No. 1:25-cv-244 (D.N.H.), the District of New Hampshire certified a nationwide class and granted preliminary injunctive relief to enjoin the same executive order regarding birthright citizenship that was at issue in *Trump v. CASA*. In September 2025, the DOJ appealed the preliminary injunction to the First Circuit and subsequently petitioned for a writ of certiorari before judgment in the Supreme Court also seeking review of whether Executive Order No. 14160 complies with the Citizenship Clause and its enacting statute. *See* No. 25-365 (U.S.). The case has been distributed for conference.

Federal Funding Freeze Litigation

Two courts separately ordered that the government cannot implement the freeze or pause all activities related to federal financial assistance impacted by various executive orders, including funding for foreign aid, DEI programs, and the Green New Deal. The government is seeking to overturn the orders through the appellate courts.

Several nonprofit organizations filed one of the lawsuits, *National Council of Nonprofits, et al. v. Office of Management and Budget*,No. 25-cv-00239 (D.D.C.), challenging the funding freeze in Washington D.C. Twenty-two states and the District of Columbia filed the other lawsuit, *New York v. Trump*, No. 25-cv-00039 (D.R.I.), in Rhode Island. The D.C. court entered its preliminary injunction on February 25, 2025 and the Rhode Island court entered its preliminary injunction on March 6, 2025. The government timely appeal both orders.

The litigation in D.C. is stayed the case pending the outcome of the appeal other than requiring OMB to produce the administrative record and allowing the nonprofit organizations to submit additional discovery requests, if needed. Briefing in the appeal is scheduled to be completed by January 16, 2026.

Briefing and oral argument on the merits of the appeal is complete in the Rhode Island case. An order could come out at any time.

Executive Order 14242 Directing the Closure of ED

The administration's reductions in force and executive order directing the closure of ED have been heavily litigated. While the Supreme Court has indicated a willingness to allow the reductions in force and executive order to remain in place, the challenges have continued working their way through the court system.

In *NAACP v. United States*, No. 25-cv-00965 (D. Md.), the NAACP, education advocacy groups, and three children sued challenging Executive Order 14242 on the basis that it violates the Constitution's take care and spending clauses, the separation of powers, and the APA. The Maryland court denied Plaintiff's motion for a preliminary injunction on August 19, 2025. It also denied Defendant's motion to dismiss the claims asserted against it on the same day. The administration has since moved to dismiss the case in its entirety again. That motion has not yet been ruled on.

Two cases challenging the RIF and executive order, *Somerville Public Schools et al. v. Trump et al.*, No. 25-cv-10677 (D. Mass.) and *State of New York et al. v. McMahon et al.*, No. 25-cv-10601 (D. Mass.), are pending in federal court in Massachusetts. These cases have been consolidated under the *State of New York* case number. The district court initially granted the plaintiffs' motions for preliminary injunction preventing ED from 1) carrying out the RIF; 2) implementing the March 20, 2025, executive order directing ED to take all legal steps necessary to facilitate ED's closure; and 3) carrying out President Trump's announcement regarding the transfer of management of the student loan and special education programs from ED to the Small Business Administration and Department of Health and Human Services. But the Supreme Court subsequently granted the administration's motion to stay the enforcement of the injunction, which led to the district court vacating the preliminary injunction and the administration being able to continue implementing the RIF unless otherwise enjoined while the case proceeds on the merits.

A separate case, *Victims Rights Law Center, et al. v. U.S. Dep't of Ed., et al.*, No. 25-cv-11042 (D. Mass), was filed in Massachusetts challenging the RIF as it relates to employees in the Office of Civil Rights. The district court entered a preliminary injunction on June 18, 2025 requiring that ED bring affected OCR employees back to active duty. ED appealed, but all briefing deadlines in the case have been stayed and the district court has since vacated and dissolved the injunction at the parties' request. The parties are expected to ask that the appeal be dismissed as moot in the near future.

Finally, several students and the Council of Parent Attorneys and Advocates filed a lawsuit, *A.W., et al. v. U.S. Dep't of Ed.*, No. 25-cv-00744 (D.D.C.), seeking to enjoin ED's reduction in force and "decimation" of its Office of Civil Rights. The court denied plaintiffs' motion for preliminary injunction on May 21, 2025. In denying the motion, the court determined that the plaintiffs were not likely to succeed on their claims because there was no evidence that OCR has failed to perform its duties and "broad programmatic attacks" are not viable claims under the Administrative Procedures Act. The court entered an order staying the case pending further order of the court and the parties have periodically submitted status reports.

ED, in an unprompted move, informed certain OCR employees in December 2025 that they were expected to return to work while the RIF cases were litigated. The notice sent to employees highlighted the importance of utilizing OCR staff in handling OCR's existing complaints.

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