HUSCH BLACKWELL

The New Administration and Higher Education

January 29, 2025

© 2025 Husch Blackwell LLP

1

Presenters

John W. Borkowski | Partner
john.borkowski@huschblackwell.com
312.526.1538

Anne D. Cartwright | Partner
anne.cartwright@huschblackwell.com
816.983.8351

Julie Miceli | Partner
julie.miceli@huschblackwell.com
312.526.1521

Lisa Parker | Partner
lisa.parker@huschblackwell.com
312.526.1539

Aleks O. Rushing | Partner
aleks.rushing@huschblackwell.com
314.345.6275

Elizabeth S. Samples | Partner
elizabeth.samples@huschblackwell.com
816.983.8271

Derek T. Teeter | Partner
derek.teeter@huschblackwell.com
816.983.8331

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

2

© 2025 Husch Blackwell LLP. All Rights Reserved

Agenda

- Free Expression
- Civil Rights
- Immigration
- Foreign Relationships
- Research
- Nonprofit Operations
- Accreditation
- Title IV Federal Student Aid
- Leadership & Policy Forecast

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

3

Free Expression

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

4

© 2025 Husch Blackwell LLP. All Rights Reserved

Multiple Facets

- Federal lawsuits filed against state actors (public universities; community colleges; technical schools)
- Department of Justice and other federal support of private litigants through amicus briefs
- Department of Education sub-regulatory guidance
- Potential changes to Title IV conditions
- Pressure on accreditors

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

5

Key Subject Matter Areas

- Name and pronoun policies and similar directives
- Physical protests and encampments
- Heckler's veto and controversial speakers
- Student academic freedom
- Religious expression and religious student organizations
- Antisemitism

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

6

© 2025 Husch Blackwell LLP. All Rights Reserved

7

Plans and Actions Related to U.S. Department of Education

- President Trump has referenced elimination of federal Department of Education (ED)
- Potential policy and legislative plans for ED include moving offices to other agencies
- Senior Appointees announced on January 23, including Deputy Assistant Secretary for Policy, Office for Civil Rights
- Actions taken related to DEI initiatives

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

8

© 2025 Husch Blackwell LLP. All Rights Reserved

Title IX Update

- Court decision vacated ED's 2024 Title IX Final Rule
  - Return to 2020 regulations (with updated definition of sexual assault)
  - Note state law applicable to your institution when considering changes
- Administration has expressed position regarding definition of sex
  - January 20, 2025, Executive Order
  - Variation in federal court interpretation
- Action related to recently-issued Title IX Athletics Guidance?

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

9

ADA/Section 504 Enforcement

Rule on Accessibility of Web Content

Continuation of private demands and litigation

Other policy agendas

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

10

© 2025 Husch Blackwell LLP. All Rights Reserved

Title VI Enforcement

- 2023 and 2024 OCR Dear Colleague Letter regarding hostile environment based on ancestry
- 2024 Resolution Agreements
- Likely continued emphasis on impact of campus protests on Jewish and Israeli students
- Groundwork for potentially deporting foreign students who engage in anti-Israeli activism

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

11

Possible Title VI Regulatory Changes

- Project 2025: Remove disparate impact standard from Title VI regulations and guidance

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

12

© 2025 Husch Blackwell LLP. All Rights Reserved

Diversity, Equity, and Inclusion

- Elimination of federal programs
- Search for informal DE&I activities in federal programs
- Scrutiny of DE&I programs outside of the federal government
- Investigations of major institutions, including colleges and universities “with endowments over $1 billion”

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

13

Department of Justice

- Temporary pause of Civil Rights Division activity
- Likely reversal of direction with respect to enforcement activities
  - DE&I
  - Admissions and scholarships

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

14

© 2025 Husch Blackwell LLP. All Rights Reserved

Possible K-12 Initiatives

- Support for school choice initiatives
- Changes in school lunch program
- Possible attempt to end continuing desegregation consent decrees

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

15

Immigration

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

16

© 2025 Husch Blackwell LLP. All Rights Reserved

Immigration

Dreamers - Deferred Action for Childhood Arrival (DACA):	• Not legal status or a pathway to citizenship • Apply to work w/o deportation | two-year time periods • Legal challenges ongoing • President Trump may rescind the DACA regulation
F-1, M-1, J-1 Student Visas:	• Most international students are on F-1, M-1, and J-1 visas • Non-Immigrant temporary visa to study in the United States • Changes to Optional Practical Training (OPT) ?
H-1B, O-1 Working Visas	• Many foreign higher ed faculty hold these visas • Working visas for specialty field or exceptional expertise • Stricter Requirements? Elimination of the Program?

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

17

Immigration Enforcement On Campus

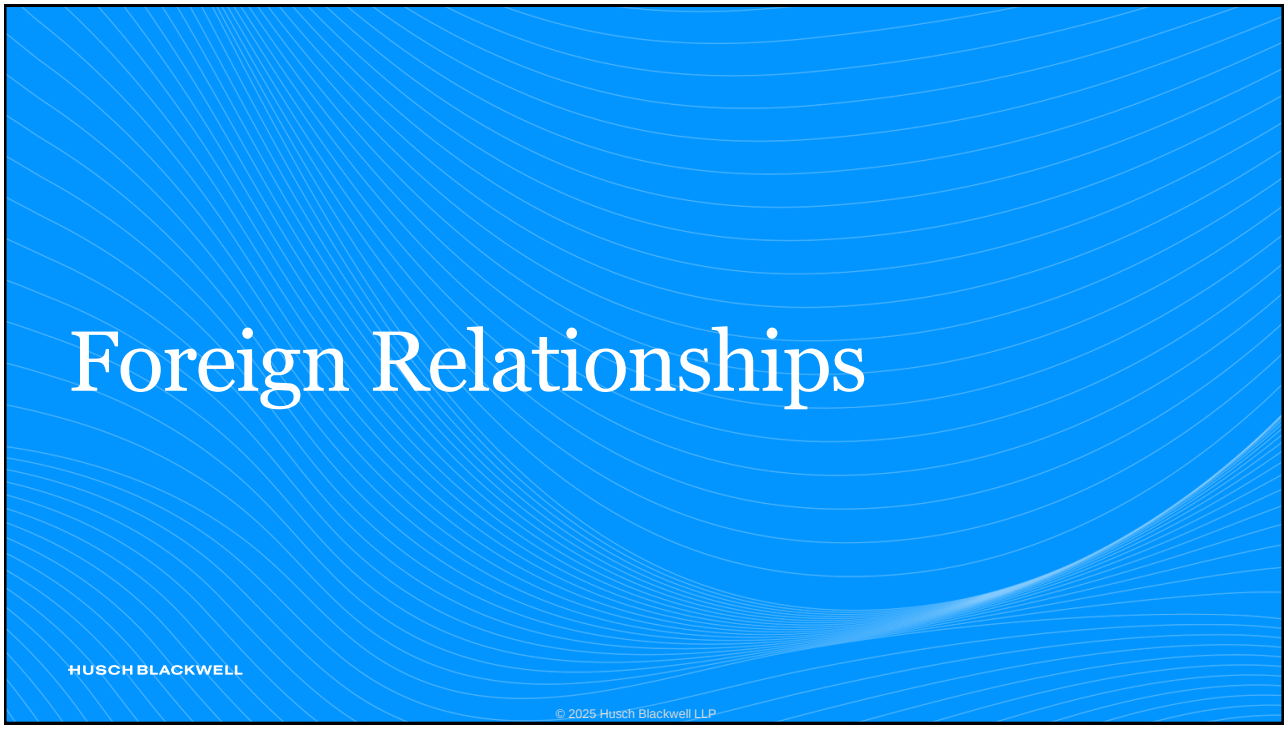
- On January 20, 2025: Acting Homeland Security Secretary Benjamine Huffman ***rescinded guidance*** that ***limited federal immigration arrests near sensitive locations***, including ***schools***, hospitals and churches.
- Navigating Enforcement on Your Campus:
  - Not a one-size-fits-all approach
  - Consider developing policies, procedures, protocols, and/or practices
  - Understand your institution's legal rights and responsibilities under federal and state law
  - Consider designating a point of contact/designated representative to field these inquiries
  - Determine whether to provide additional support resources for faculty, staff, and students
  - Consider whether to issue statements to employees, students, and/or campus-wide community

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

18

© 2025 Husch Blackwell LLP. All Rights Reserved



19

Foreign Relationships

- Reporting
  - Section 117
  - Other Reporting
- Export Control
- Relationship Planning

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

20

© 2025 Husch Blackwell LLP. All Rights Reserved

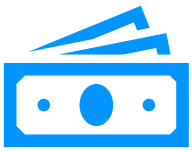
Research

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

21

Research



Potential shift in research priorities, structure, funding

Research misconduct

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

22

© 2025 Husch Blackwell LLP. All Rights Reserved

23

Nonprofit Operations

- Endowments
- Revenue streams and contracts
- USED 34 C.F.R. § 600.2 vs. IRS 501(c)(3) definition

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

24

© 2025 Husch Blackwell LLP. All Rights Reserved

Accreditation

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

25

Accreditation

"Our secret weapon will be the college accreditation system. It's called accreditation for a reason. The accreditors are supposed to ensure that schools are not ripping off students and taxpayers, but they have failed totally."

- Donald Trump, Agenda 47 2023 Campaign video

U.S. Department of Education Recognition of Accrediting Agencies - Possible areas of regulatory focus:

- Removal of accreditation standards that support DEI
- Focus on career-readiness
- Focus on student outcomes
- Easier path for new accrediting agencies
- Requirement to change accrediting agencies
- Uncoupling of accreditation & Federal Student Aid program participation

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

26

© 2025 Husch Blackwell LLP. All Rights Reserved

Title IV Federal Student Aid

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

27

OMB Freezes Federal Financial Assistance

- **January 27, 2025:**
  - Office of Management and Budget (White House) issues Memorandum-25-15 freezing payments for "federal financial assistance programs"; does not include payments "provided directly to individuals."
- **January 28, 2025:**
  - ED clarifies that this does not impact Title IV funding (Loans or Pell) in EA GEN-25-09.
  - Future of ED's other discretionary and mandatory funding programs issued directly to institutions is unclear.
  - A federal judge temporarily enjoined the freeze until at least Feb. 3, 2025.

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

28

© 2025 Husch Blackwell LLP. All Rights Reserved

Anticipated Title IV Related Regulatory Priorities

- Learning from President Trump's First Term:
  - Focus on de-regulation
  - ED delayed and rewrote Obama-era Borrower Defense Regulation
  - Repealed previous Gainful Employment regulations
- Project 2025: Rescind or "Roll Back" Biden-era regulations:
  - Financial Value Transparency and Gainful Employment
  - Borrower Defense to Repayment
  - Administrative Capability
  - Closed School Loan Discharge
  - Financial Responsibility
  - Accreditation (discussed earlier)

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

29

New Federal Regulations Effective July 1, 2024

Topic	Change	Regulatory Citation
Financial Responsibility	Changes to audit submission deadline	34 CFR 668.23
	Changes to financial responsibility standards	34 CFR 668.171(b)
	New triggers for ED recalculating financial responsibility score and related reporting	34 CFR 668.171(c)(d) (f)(g)
	Changes in ownership/control financial responsibility standards	34 CFR 668.176
Certification for Participation in Federal Student Aid Programs	Removing automatic certification	34 CFR 668.13(b)
	Additional circumstances leading to Provisional Certification	34 CFR 668.13(c)(1)
	Performance measures that may impact certification	34 CFR 668.13(e)
	Signatories for ED Program Participation Agreement	34 CFR 668.14(a)(3)
	Limits to Length of Gainful Employment (GE) Programs	34 CFR 668.14(b)(26)
	Programs preparing students for an occupation that requires licensure must meet any required programmatic accreditation/state licensing requirements	34 CFR 668.14(b)(32)
	Institution must comply with state closure laws and teach-out requirements	34 CFR 668.14(b)(32)
Administrative Capability	New standards re: financial aid communications, debarment/suspension, HS diploma validity	34 CFR 668.16(h)(k)(p)
	New standards related to significant negative actions, e.g., court actions	34 CFR 668.16(n)
	New capability-career services requirements	34 CFR 668.16(q)
	Requires "geographically accessible" clinical or externship opportunities	34 CFR 668.16(r)
	New standards related to timely disbursement of Title IV funds	34 CFR 668.16(s)
	Administrative capability concerns if 50% + Title IV revenue comes from failing GE programs	34 CFR 668.16(t)
	New standards related to "misrepresentations" to students	34 CFR 668.16(u)
Ability-to-Benefit	Student Eligibility	34 CFR 668.32, 668.156, 157

30

© 2025 Husch Blackwell LLP. All Rights Reserved

Stopped Midstream (Pending Final Rules)

- Distance Education
- R2T4
- Student Loan Relief
- TRIO

Stopped in Advance (Pending Proposed Rules)

- Cash Management
- Financial Hardship Definitions
- State Authorization

HUSCH BLACKWELL

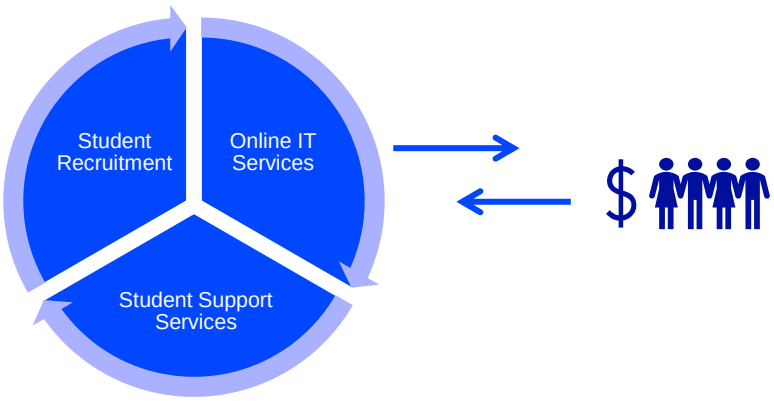
© 2025 Husch Blackwell LLP

31

Incentive Compensation Rule

Incentive Compensation Rule: Prohibits institutions from providing incentives to employees or third-parties for securing student enrollments or financial aid.

"Bundled Services Exception" allows an institution to pay a third-party provider a percentage of tuition revenue in exchange for providing a bundle of services.



HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

32

© 2025 Husch Blackwell LLP. All Rights Reserved

Leadership & Policy Forecast

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

33

Secretary of Education Nominee: Linda McMahon

- Owner and Former CEO of the WWE
- Chair of the America First Policy Institute
- Trustee, Sacred Heart University
- Former Administrator of the SBA (2017-19)
- Former member of the Connecticut Board of Education
- Largely unknown policy positions; AFPI advocates for school choice, promotes technical education programs, and is an outspoken critic of DEI initiatives

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

34

© 2025 Husch Blackwell LLP. All Rights Reserved

Acting Secretary of Education: Denise Carter

- Appointed Acting U.S. Secretary of Education by President Donald Trump on Jan. 20, 2025
- Was serving as Acting Chief Operating Officer of Federal Student Aid
- Former Acting Assistant Secretary of Finance and Operations
- Will serve in roll through confirmation of new Secretary of Education

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

35

Deputy Secretary of Education Nominee: Penny Schwinn, Ph.D.

- Worked in multiple state education agencies:
  - Former Education Commissioner (Tennessee)
  - Former Deputy Commissioner of Standards and Engagement; Deputy Commissioner of Special Populations and Monitoring, Chief Deputy Commissioner of Academics (Texas)
  - Assistant Secretary of Education (Delaware)
- Former school board member (Sacramento County, CA)
- Former principal (charter school)
- Former teacher

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

36

© 2025 Husch Blackwell LLP. All Rights Reserved

Deputy Assistant Secretary for Policy, Office for Civil Rights: Craig Trainor

- Former Senior Counsel to the House Judiciary Committee (Chairman Jim Jordan)
- Senior Litigation Counsel, America First Policy Institute
- Private practice in civil rights and criminal defense

HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

37

Policy Plans in Project 2025

- Disclaimed by President Trump; intended to identify the conservative approach to governing
- Legislative Plans for ED include:
  - "Wind down" the U.S. Department of Education
  - Move Federal Student Aid responsibilities to the Treasury
  - Move Office of Postsecondary Education to Department of Labor
  - Eliminate Negotiated Rulemaking
- Eliminate DEI from federal education policy & federal funding recipients

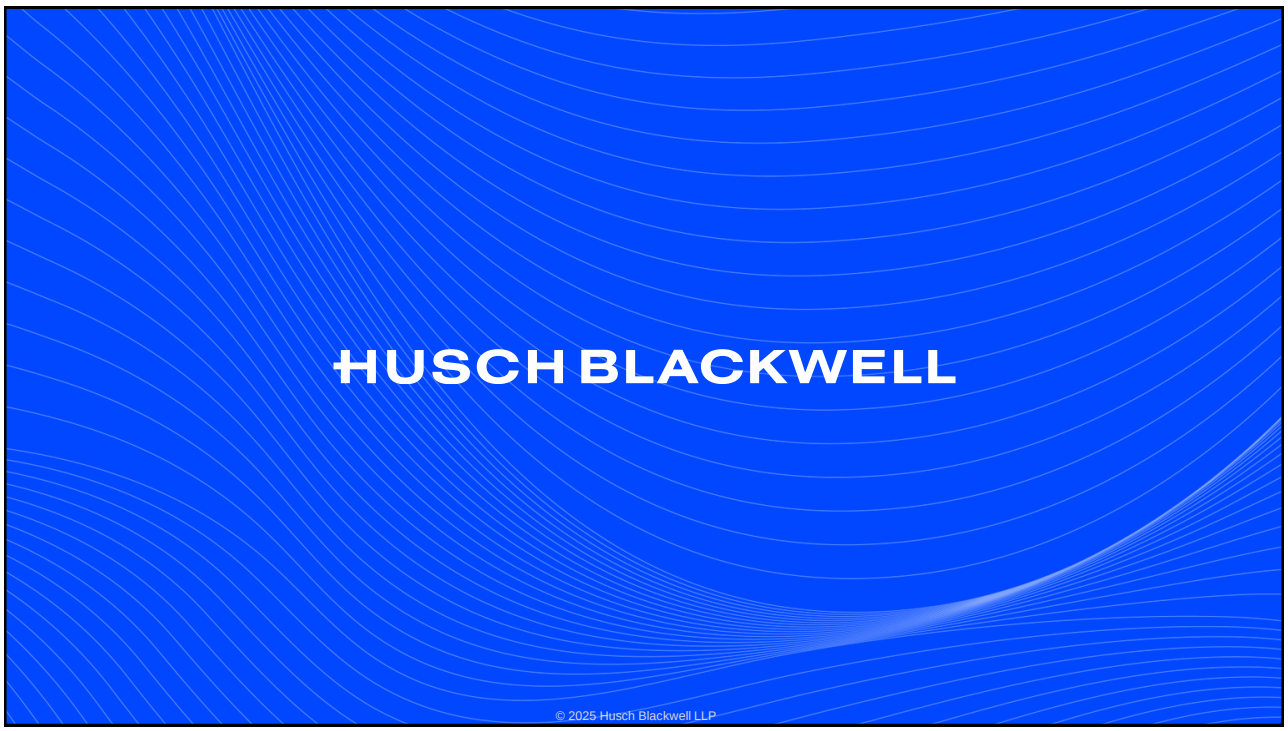
HUSCH BLACKWELL

© 2025 Husch Blackwell LLP

38

© 2025 Husch Blackwell LLP. All Rights Reserved

39



40

© 2025 Husch Blackwell LLP. All Rights Reserved