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WICHE Cooperative for Educational Technologies

SAN
STATE AUTHORIZATION NETWORK
a division of WCET

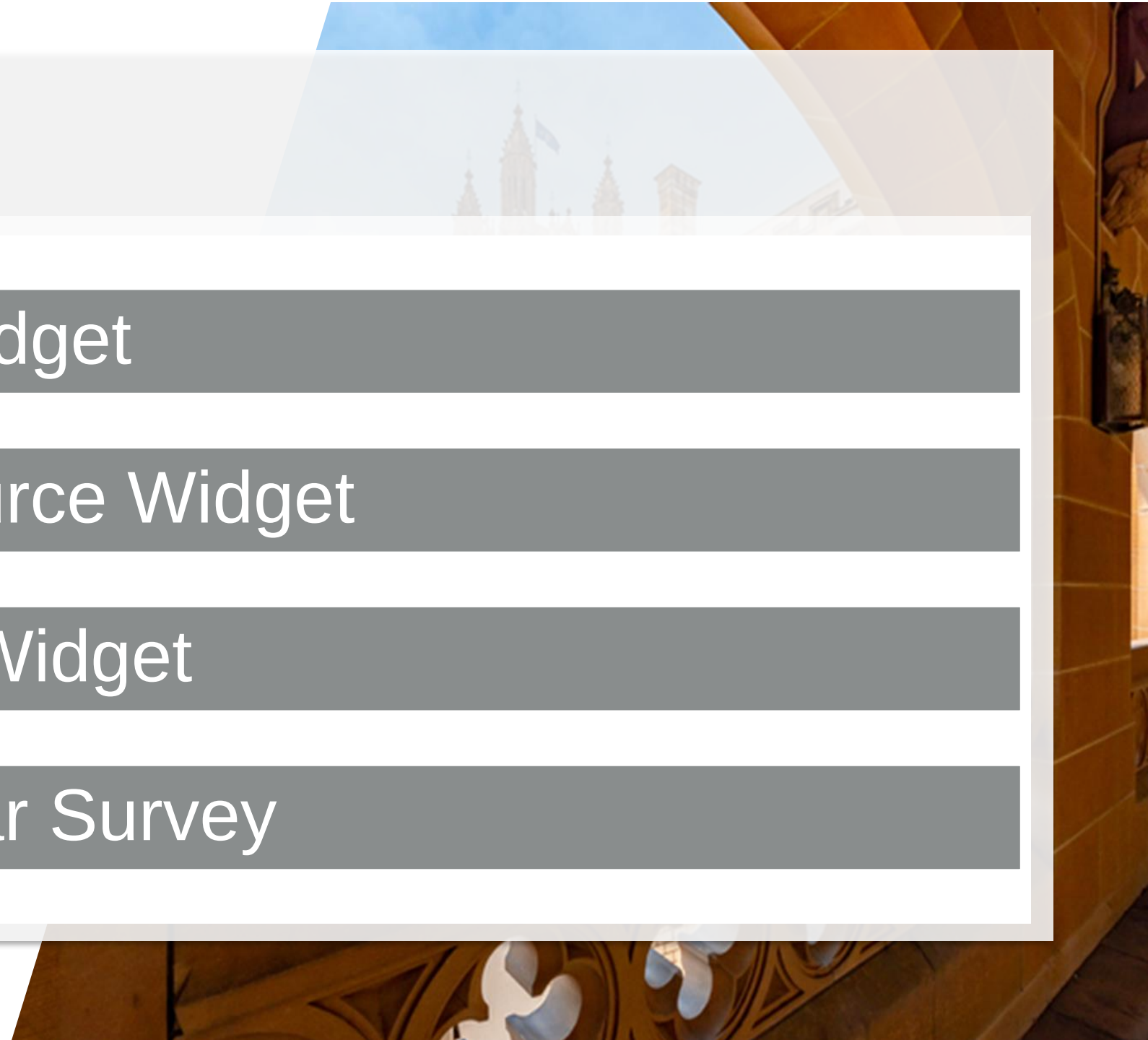
ED's Evolving State Authorization and Professional Licensure Requirements

Higher Education Webinar Series

April 4, 2024

Housekeeping

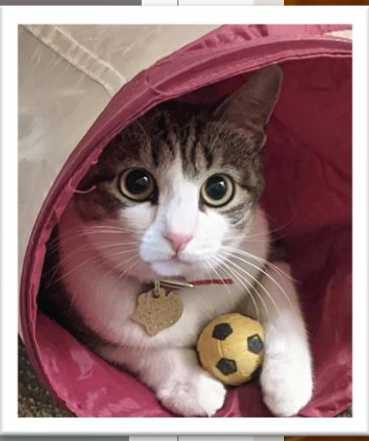
- The Q&A Widget
- The Resource Widget
- The Help Widget
- Post-Webinar Survey



THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Executive Director for the WICHE Cooperative for Educational Technologies.
  - Expert and leader regarding federal and state policies concerning educational technologies.
  - Has represented the distance education community on federal negotiated rulemaking committees and subcommittees.
  - Cat Person (Luna)
- Contact Information
  - rpoulin@wiche.edu
  - 303-541-0305



Russ Poulin

Executive Director

WCET

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Senior Director, State Authorization Network & WCET Policy Innovations.
  - Serves the WCET membership in addressing emerging and special regulatory issues related to digital learning in postsecondary education.
  - Brings extensive experience in education and compliance to the WCET team.
  - Dog Person (Piccolo & Hercules)
- Contact Information
  - cdowd@wiche.edu
  - 303-541-0210

Cheryl Dowd

Senior Director

SAN & WCET Policy Innovations

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Senior member of TC's Higher Education Practice.
  - Provides regulatory counsel on federal, state, and accrediting agency laws and standards governing higher education.
  - Routinely assists with matters involving state authorization, student affairs, and corporate and transactional issues.
  - Dog Person (Yoshi)
- Contact Information
  - kwendel@thompsoncoburn.com
  - 202-585-6917

Katie Wendel

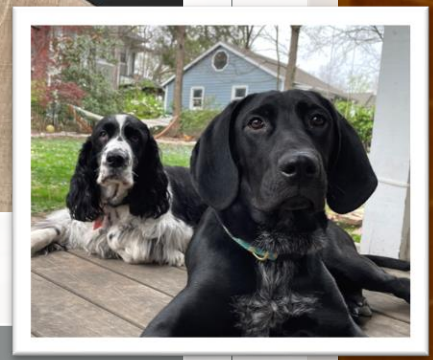
Counsel

Thompson Coburn LLP

THOMPSON COBURN LLP

Presenter Profile

- Practice and Experience
  - Chair of TC's Higher Education Practice
  - Assists institutions of higher education to navigate challenging legal and regulatory matters.
  - Advises regarding strategic planning, governance, and complex substantive changes.
  - Represents institutions in proceedings before ED and other postsecondary regulators.
  - Dog Person (Louis & Asher)
- Contact Information
  - alacey@thompsoncoburn.com
  - 314-552-6405



Aaron Lacey

Partner

Thompson Coburn LLP

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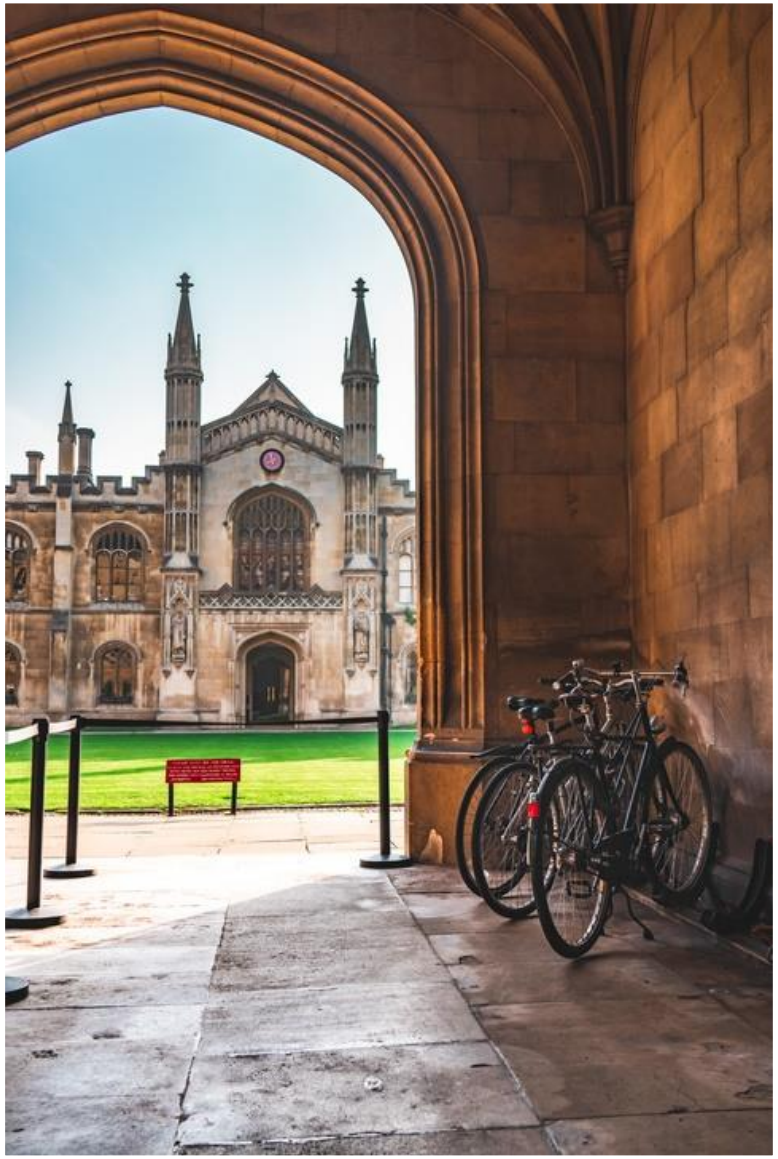
Syllabus

- The New Rules Taking Effect July 1, 2024
- Professional Licensure Program Disclosures
- The New PPA Requirements
- The Devil in the Details
- Program Integrity Rulemaking



New Rules Taking Effect July 1, 2024

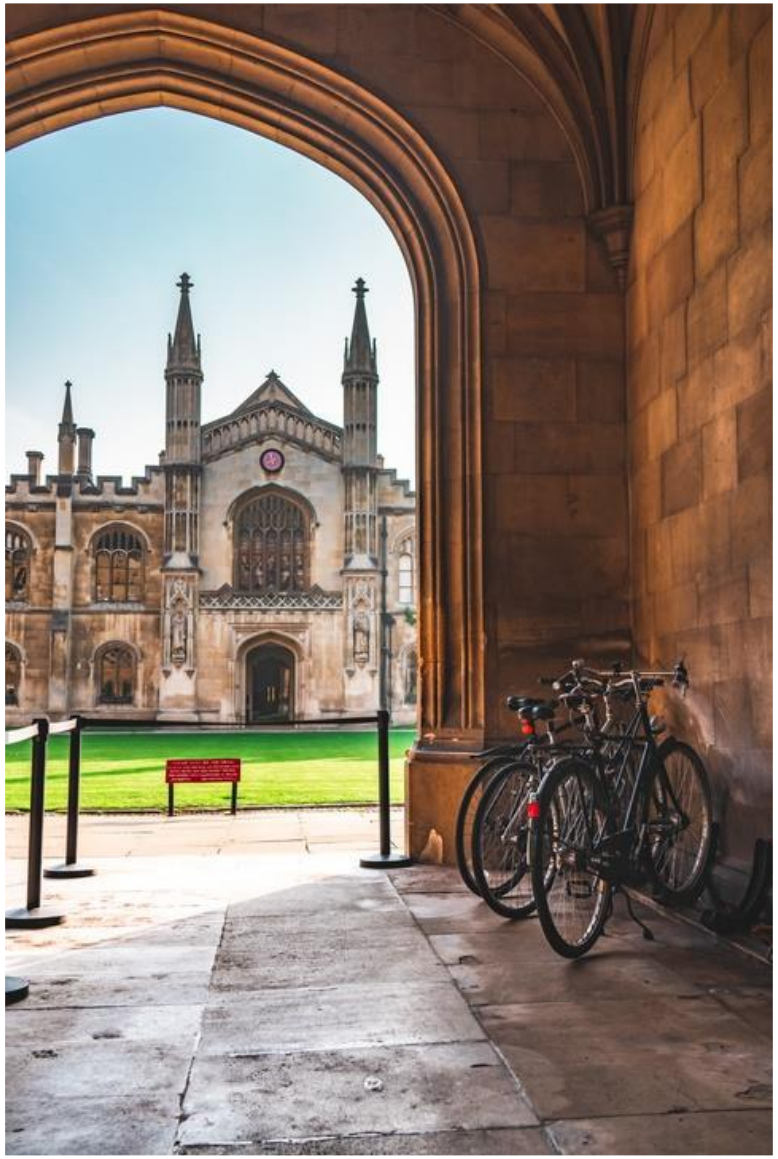
New Rules Taking Effect July 1, 2024

July 1, 2024, effective date

- July 10, 2023 (88 FR 43820)
  - Income-driven repayment plans
- October 10, 2023 (88 FR 70004)
  - Financial Value Transparency and Gainful Employment
- October 31, 2023 (88 FR 74568)
  - Financial responsibility
  - State-defined processes for Ability to Benefit
  - Standards of administrative capability
  - Certification procedures for Title IV participation
    - Professional licensure, programmatic accreditation, and state law compliance

Impact Opportunities

- Challenge rule through litigation



Professional Licensure Program Disclosures

The Disclosure Framework

- The rules requiring institutions to disclose information regarding professional licensure programs are located at 34 C.F.R. 668.43.
  - This is the section of the regulations that details the range of "institutional information" that must be made available to enrolled and prospective students, including policies concerning cost of attendance, refunds, academic programs, copyright infringement, fire safety report, and vaccinations, among others.
- We emphasize that these requirements are part of ED's consumer information and disclosure framework and that the regulations taking effective July 1 made only minor revisions to these disclosure requirements.

34 C.F.R. § 668.43 (July 1, 2024).

Determining a Student's Location

- It is still the case that institutions must determine "the State in which a student is located at the time of the student's initial enrollment in an educational program" and, if applicable, "upon formal receipt of information from the student... that the student's location has changed to another State."
- It is still the case institutions get to fashion the policies and procedures pursuant to which this determination will be made, provided it is "applied consistently to all students."

34 C.F.R. § 668.43(c) (July 1, 2024).

Professional Licensure Program Disclosures

- It is still the case that if an institution has made a determination that a covered program's does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the institution.

34 C.F.R. § 668.43(c)(1) (July 1, 2024).

Professional Licensure Program Disclosures

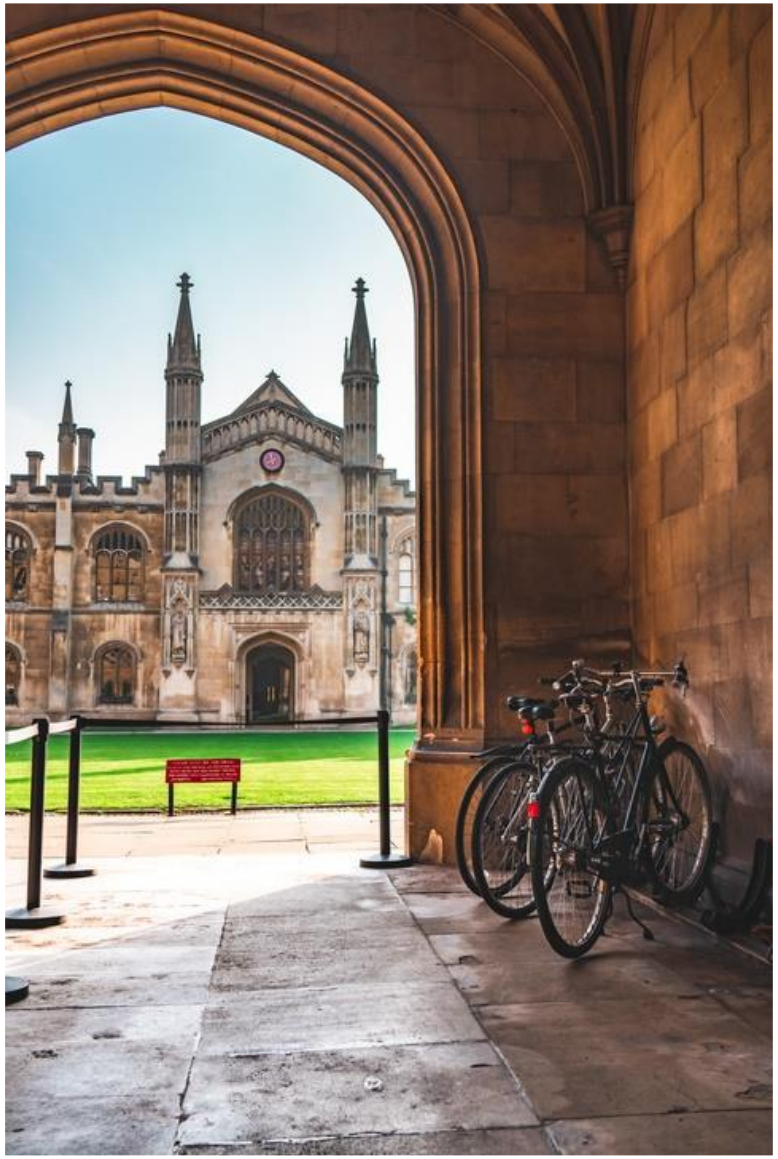
- And it is still the case that if an institution determines that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

34 C.F.R. § 668.43(c)(2) (July 1, 2024).

From Three Lists to Two

- For any educational program "designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements," an institution must make available "a list of all States where the institution has determined... that the program does and does not meet such requirements."
- Thus, institutions are no longer required to produce of list of states where no determination has been made.
- "If an institution is not enrolling students from a given State, it is not obligated to determine anything regarding that State; it just cannot offer the program to anyone in that State."

34 C.F.R. § 668.43(a)(5)(v) (July 1, 2024); 88 Fed. Reg. 74646 (Oct. 31, 2023).



The New PPA Requirements

The Program Participation Agreement

- An institution's program participation agreement (PPA) conditions its participation in the Title IV programs on "upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet."
- Institutions certify when they sign a PPA that they will comply with the express provisions of 34 C.F.R. 668.14(b).
- As of July 1, the new rules relating to professional licensure programs, programmatic accreditation, and state closure law compliance will become conditions of participation expressly set forth in the PPA.

34 C.F.R. § 668.14 (July 1, 2024).

New PPA Requirements for Covered States

Covered States		
Any State in which the institution is located.	Any State in which students enrolled by the institution in distance education or correspondence courses are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2).	Any State in which a student who enrolls in a program on or after July 1, 2024, attests that they intend to seek employment.

34 C.F.R. § 668.14(b)(32) (July 1, 2024).

New Professional Licensure Program Requirement

- For any Covered State, an institution must determine that each Title IV eligible program it offers satisfies "the applicable educational requirements for professional licensure or certification requirements in the State so that a student who enrolls in the program, and seeks employment in that State after completing the program, qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter."

34 C.F.R. § 668.14(b)(32)(ii) (July 1, 2024).

New Programmatic Accreditation Requirement

- For any Covered State, an institution must determine that each Title IV eligible program it offers is "programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency."

34 C.F.R. § 668.14(b)(32)(i) (July 1, 2024).

New State Closure Law Compliance

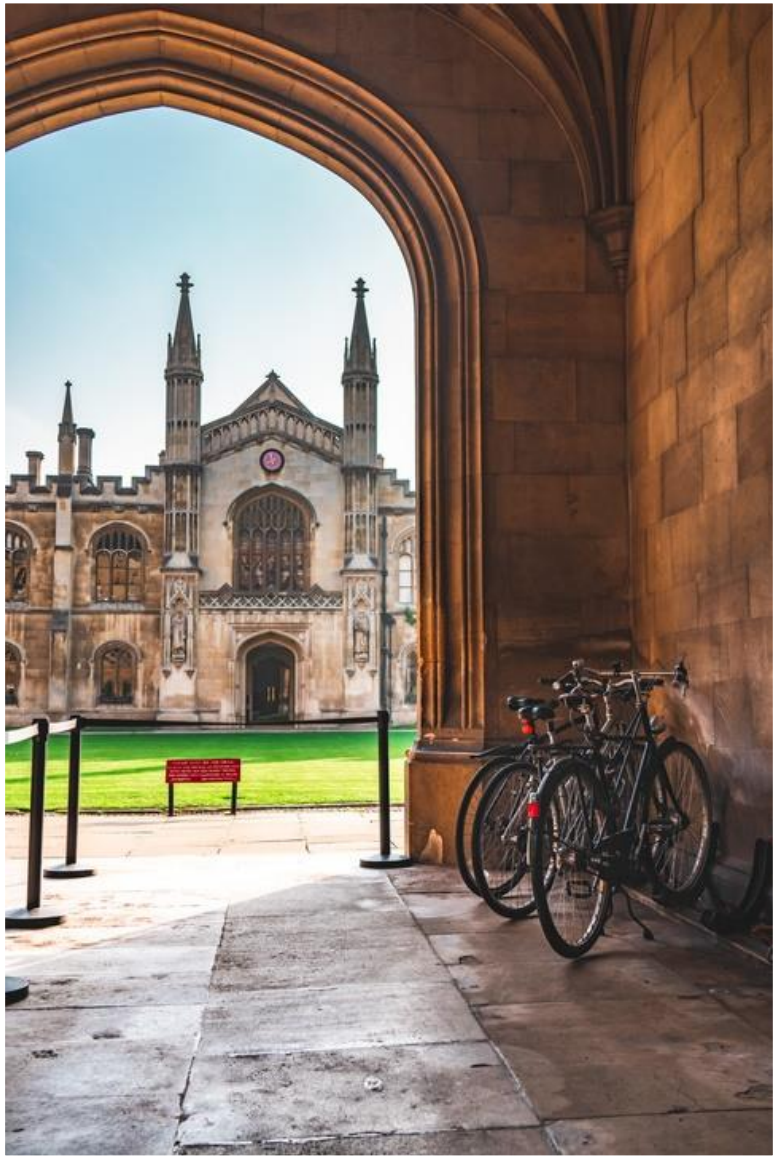
- For any Covered State, an institution must determine that each Title IV eligible program it offers "[c]omplies with all State laws related to closure, including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds."

34 C.F.R. § 668.14(b)(32)(iii) (July 1, 2024).

Programs Must Meet New Requirements

- In the commentary, ED makes clear that it added "§ 668.14(b)(32)(i) and (ii) to require all programs that prepare students for occupations requiring programmatic accreditation or State licensure to meet those requirements."
- ED observes that if programmatic or licensure requirements exist "an institution must follow them with respect to the students attending from those States. That also means that if an institution cannot determine that its program meets the education requirements for licensure or certification, then it cannot offer the program to future students in that State."

88 Fed. Reg. 74645 (Oct. 31, 2023).



The Devil in the Details

Details: Non-Title IV Programs

- Question: Do I have to comply with the new PPA requirements for my non-Title IV programs?
- Answer: No, the requirements only cover Title IV programs.

Details: Non-Title IV Programs

- Question: Do I have to comply with the new PPA requirements for students in my Title IV programs who are not receiving any form of Title IV?
- Answer: Yes. The requirements cover Title IV programs and do not make any distinction based on whether the students are receiving Title IV funds.

Details: Determining Location

- Question: The law requires that I determine a student's location "at the time of the student's initial enrollment." Does that just mean I have to make the determination at that point in time, or does that mean I have to use the student's location on the day they enroll?
- Answer: ED has consistently afforded institutions considerable flexibility in designing their policies for determining location.
  - "With respect to determining "time of enrollment" for determining a student's location, we specify in the NPRM that the location is determined at the time of a student's initial enrollment in a program (as opposed to the time of a student's initial application to the institution). We did not attach any further conditions to this determination."

84 Fed. Reg. 58844 (Nov. 1, 2019).

Details: Determining Location

- Question: The law requires that my policy for determining a student's location be "applied consistently to all students." But can the policy apply differently to online students, on-ground students, and hybrid students?
- Answer: Again, ED has consistently afforded institutions considerable flexibility in designing their policies for determining location.
  - "[W]e expect institutions to consistently apply their policies and procedures regarding student location to all students, including students enrolled in ''brick-and-mortar'' programs."
  - "Institutions may, however, develop procedures for determining student location that are best suited to their organization and the student population they serve. For instance, institutions may make different determinations for different groups of students, such as undergraduate versus graduate students."

84 Fed. Reg. 58844; 58885-7 (Nov. 1, 2019).

Details: Determining Location

- Question: How should I go about obtaining and documenting student location and any attestation regarding future employment plans?
- Answer: Institutions certainly should develop a “location determination” policy that defines what constitutes “enrollment” and “time of initial enrollment,” how location will be determined at that point in time, and any distinctions among student groups. Processes should be developed for obtaining this information from prospective students, along with any attestation regarding future employment plans, and for maintaining documentation of both.

Details: Determining Location

- Question: How do I determine the location of a student who intends to take some classes on ground and others online? And what if the student will be located in a different State in each instance?
- Answer: Unclear, though unofficial communications with ED suggest that the location determination would turn on whether the student was taking any online courses at the time of initial enrollment, meaning during the student's initial term. See next slide for additional detail.

Details: Determining Location

- Example Presented: A student attending George Washington University in DC lives in Virginia and intends to take a single course online from her home.
- Unofficial Guidance: "[T]he requirements in 34 CFR 668.14(b)(32) apply only to the situation at the time of the student's initial enrollment, not throughout the student's enrollment in the program. In other words, if at the time of a student's initial enrollment the student was enrolling solely in on-campus coursework, then the student would not be considered "enrolled by the institution in distance education or correspondence courses" under 34 CFR 668.14(b)(32). On the other hand, if the student was enrolled in at least one online course during that first semester, then that would make the student "enrolled by the institution in distance education" and the institution subject to 34 CFR 668.14(b)(32)... Since the student lives in Virginia and is taking an online course during their first term, they would be considered a distance education student and in accordance with 34 CFR 668.14(b)(32)(ii), the program would have to satisfy the applicable educational requirements for professional licensure or certification requirements in the State of Virginia..."

Details: Professional Licensure Programs

- Question: What is the definition of a professional licensure or certification program?
- Answer: Unclear. There is not a specific definition of “professional licensure or certification program” in the law, and the concept articulated in the disclosure rules differs from the concept in the new PPA requirement (see next slide).

Details: Professional Licensure Programs

For Purposes of Disclosures

- A program "designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation" or that "is advertised as meeting such requirements..."

For Purposes of PPA Compliance

- Any program for which a "licensure or certification exam" is needed under State law for a student to practice or find employment in the State in "an occupation that the program prepares the student to enter."

34 C.F.R. § 668.43(a)(5)(v) and § 668.14(b)(32)(ii) (July 1, 2024).

Details: Professional Licensure Programs

- Unofficial guidance from ED suggests that despite the differences in these two standards, ED still takes the view that whether the program is designed or advertised "to meet educational requirements for a specific professional license or certification that is required for employment in an occupation" is determinative.
  - "If the program is advertised and designed to lead to licensure in States that require licensure, the requirements in 34 CFR 668.14(b)(c) and 34 CFR 668.43 apply. If a state does not require license and a program is not designed or advertised as meeting requirements for a specific licensure or certification, then these requirements would not be applicable."

Details: Professional Licensure Programs

- Question: How do I determine whether my program is a professional license or certification program?
- Answer: Understandably, institutions want to create a definitive list of their professional licensure programs. But your obligations under the law will turn in part on the States from which you intend to enroll students. See next slide.

Suggested Rubric

For any State, is the program designed or advertised to meet the educational requirements needed for students located in such State to obtain a specific professional license or certification required to practice in that State in the occupation the program prepares students to enter?

If yes, comply with list and disclosure requirements.

If yes, ensure program meets the educational requirements in any such State or stop enrolling new students located in the State.

If no, there's nothing more to do. However, consider including a specific disclaimer in program materials if there could be confusion regarding the design of the program, the occupation for which the program prepares students, or whether a particular professional licensure or certification is indeed required for employment.

Details: Professional Licensure Programs

- Question: How do I determine which “occupations” my program “prepares students to enter?”
- Answer: ED has long required institutions to provide information regarding the “types of employment obtained by” graduates. Institutions also may reference the CIP SOC Crosswalk, which is used by the federal government to connect programs to occupations.

34 C.F.R. § 668.41(d)(5).

Details: Professional Licensure Programs

- Question: If my program does not satisfy the requirements of a State where a prospective student is located, but the student tells me she does not want to enter any of the “occupations” my program “prepares students to enter” or that she does not want to work after graduation, can I enroll her in the program?
- Answer: Neither the disclosure obligations nor the PPA requirements appear to turn on whether the student intends to seek employment in a particular occupation (or at all).

Details: Professional Licensure Programs

- Question: If a student attests that she is going to seek employment in a State other than the one in which she is located at the time of initial enrollment, do I have to satisfy the new PPA requirements for both states?
- Answer: Though the regulatory text is unclear, both the preamble to the rule and unofficial communications from ED suggest that the intent of the law is that the institution would only have to satisfy the requirements of the State where the student intends to seek employment.
  - "[A]s stated in the preamble to the October 31, Final Rules, we added a provision in 34 CFR 668.14(b)(32) that allows an institution to offer a program to a student who currently lives in a State where the program does not meet requirements for licensure or certification if they can provide an attestation from the student about the specific State they intend to move to, and the program does satisfy the educational requirements for licensure in that State."

Details: Professional Licensure Programs

- Question: What if my program prepares students to enter an occupation for which there is a national certification or license exam that is optional?
- Answer: If the State in which the student is located does not require the optional national certification or license for the student to practice or find employment in that State, the program would not need to satisfy any educational requirements for such national certification or license exam. Note, this could vary from one State to the next.

Details: Professional Licensure Programs

- Question: What if my program prepares students to enter an occupation for which there is an optional national certification or license exam, but the specific State in which the student is located requires the national certification before a person can practice the profession in the State?
- Answer: In this case, the program would need to satisfy the educational requirements for the national certification or license exam so that a student who enrolls in the program and seeks employment in that State after completing the program, qualifies to take the licensure or certification exam. Also, we emphasize that a State might have additional educational requirements for a person to practice in the State.

Details: No Determinations

- Question: If we want to continue to publish a list of States for which we have made no determination regarding whether we satisfy professional licensure, certification, or programmatic accreditation requirements, can we do so?
- Answer: Yes. Keep in mind that for prospective students, you will have to “provide notice to that effect to the student prior to the student’s enrollment in the institution.” Also, you would not be able to enroll students located in those states and participating in distance education.

Details: Multi-State Agreements

- Question: If my institution participates in a multi-State licensure compact or agreement relating to my program, will that satisfy the new PPA requirements for professional licensure?
- Answer: Uncertain, though ED does suggest in the commentary to the new rule that it may be possible for institutions to leverage existing multi-State compacts for purposes of complying with the new requirements.
  - "The Department's concern is that a student who completes a program be able to meet the educational requirements for licensure or certification in their State... We believe that [a multi-State licensure compact] would address the Department's policy concern, provided that the student obtain a license that through reciprocity allows them to work in the State covered by the requirements in § 668.14(b)(32)(ii). This could include both a full license as well as a provisional one. Because these are all forms of licensure we do not think a regulatory change to capture this concept is necessary."

88 Fed. Reg. 74647 (Oct. 31, 2023).

Details: Implementation

- Question: What if I have a student enrolled in a program right now and the program does not meet State professional licensure requirements in the State where the student is located? Will I have to stop offering the program to the student on July 1, 2024?
- Answer: In the preamble to the final rule, ED observed "[w]e also recognize that this provision could affect the eligibility of some programs. Our goal is not to have it apply retroactively. As such, it would cover new program entrants on or after the effective date of these final regulations."

84 Fed. Reg. 58844; 58885-7 (Nov. 1, 2019).

Details: Implementation

- Question: If I have a student who enrolls prior to July 1, but who will not actually start until after July 1? Would the student be deemed a "new program entrant" who began after the effective date of the new rule?
- Answer: Unclear.

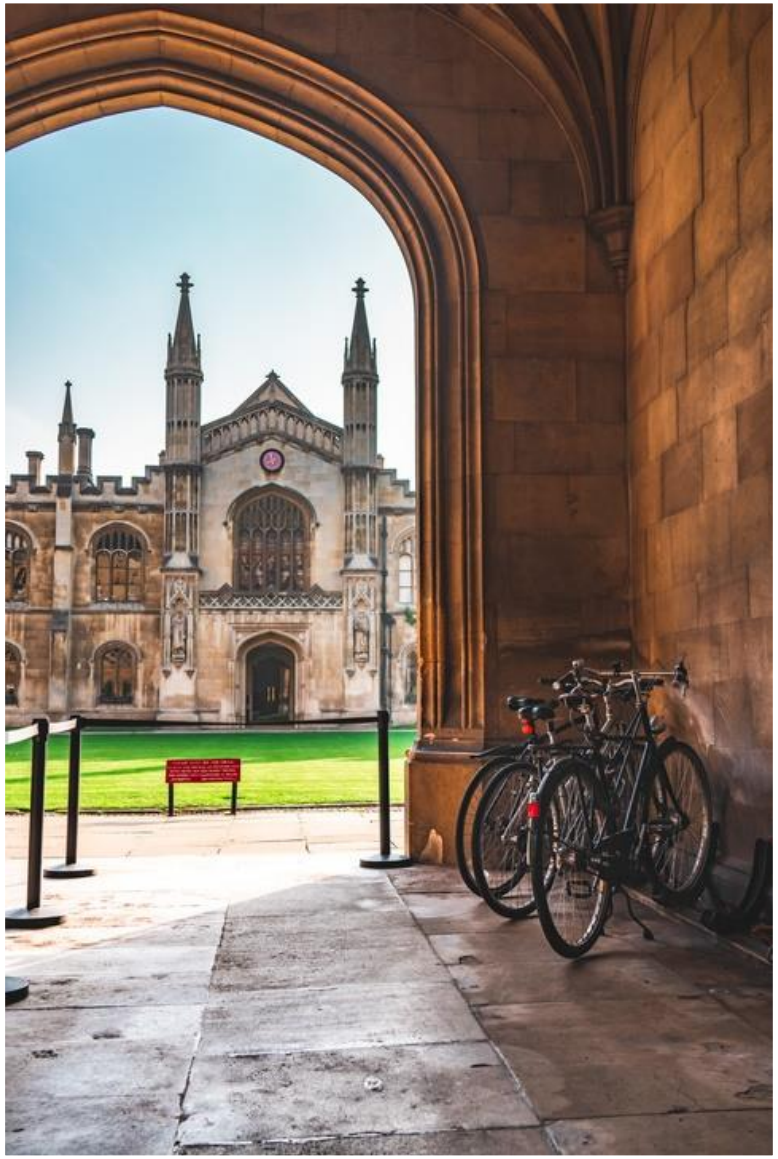
84 Fed. Reg. 58844; 58885-7 (Nov. 1, 2019).

Details: Programmatic Accreditation

- Question: What if I am offering a program that is in a pre-accredited status but the pre-accredited status is not sufficient to satisfy state licensure or certification requirement in the State where the student(s) are located?
- Answer: Uncertain. If the issue is your home state, the only apparent answer is not to seek Title IV approval until the program achieves full accreditation. If the issue is in a state other than your home state, the institution could simply refrain from enrolling students from that State until full accreditation is achieved.

Details: State Law Closure Compliance

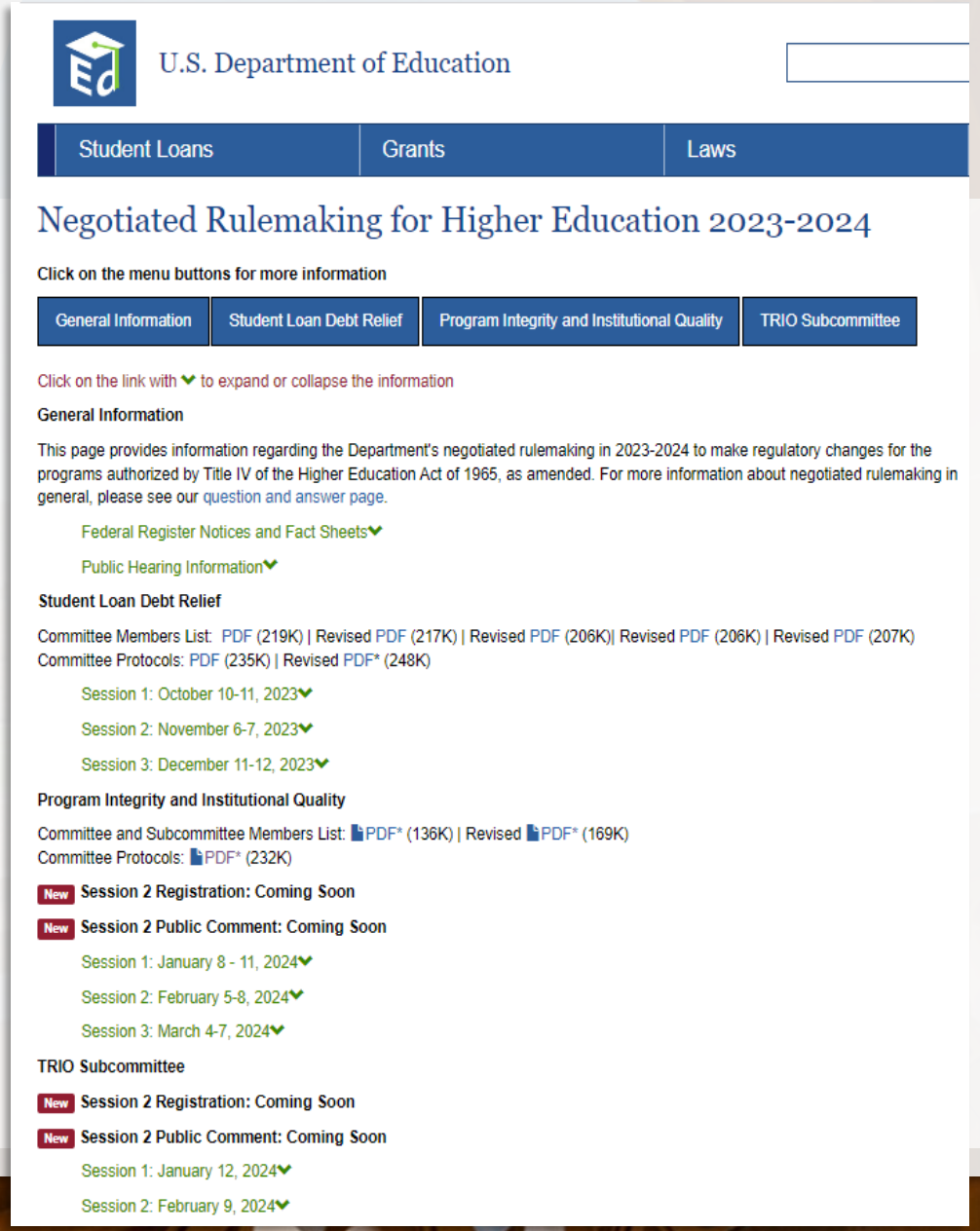
- Question: If I participate in SARA, do I really have to comply with State laws relating to closure (including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds)?
- Answer: Reasonable minds disagree... Some are taking the position that if you participate in SARA, there would be no laws within another SARA-participating State's authorization framework that would apply to you, including those relating to closure. Note, however, that even under this view, laws outside of another SARA-participating State's authorization framework would apply.



Program Integrity Rulemaking

Negotiated Rulemaking

- You can view documentation, schedules, and a range of other materials relating to ED's ongoing negotiated rulemaking efforts on this web page.
- This includes both the recently completed Student Loan Debt Relief negotiations and the ongoing Program Integrity and Institutional Quality negotiations.



U.S. Department of Education

Student Loans | Grants | Laws

Negotiated Rulemaking for Higher Education 2023-2024

Click on the menu buttons for more information

General Information | Student Loan Debt Relief | Program Integrity and Institutional Quality | TRIO Subcommittee

Click on the link with ⌄ to expand or collapse the information

General Information

This page provides information regarding the Department's negotiated rulemaking in 2023-2024 to make regulatory changes for the programs authorized by Title IV of the Higher Education Act of 1965, as amended. For more information about negotiated rulemaking in general, please see our question and answer page.

Federal Register Notices and Fact Sheets⌄

Public Hearing Information⌄

Student Loan Debt Relief

Committee Members List: PDF (219K) | Revised PDF (217K) | Revised PDF (206K)| Revised PDF (206K) | Revised PDF (207K)
Committee Protocols: PDF (235K) | Revised PDF* (248K)

Session 1: October 10-11, 2023⌄

Session 2: November 6-7, 2023⌄

Session 3: December 11-12, 2023⌄

Program Integrity and Institutional Quality

Committee and Subcommittee Members List: PDF* (136K) | Revised PDF* (169K)
Committee Protocols: PDF* (232K)

New **Session 2 Registration: Coming Soon**

New **Session 2 Public Comment: Coming Soon**

Session 1: January 8 - 11, 2024⌄

Session 2: February 5-8, 2024⌄

Session 3: March 4-7, 2024⌄

TRIO Subcommittee

New **Session 2 Registration: Coming Soon**

New **Session 2 Public Comment: Coming Soon**

Session 1: January 12, 2024⌄

Session 2: February 9, 2024⌄

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2024 Program Integrity Rulemaking

- In this rulemaking, ED focused on revising a range of existing regulations concerning cash management, state authorization, distance education, R2T4, accreditation, and the TRIO programs. Institutions had 7 seats at the table out of 15.
- Negotiators met for three rounds of discussion in January, February, and March, and the TRIO subcommittee met twice over that period.
- Consensus was only reached on one topic (the TRIO programs). As such, ED will be free to propose its preferred language on all other topics.
- A proposed rule has not yet been issued, but the Unified Agenda indicates that ED is presently targeting October 2024 for its publication.
- If the proposed rule is released in October 2024, this would mean July 1, 2026, would be the earliest possible effective date.

2024 Program Integrity Rulemaking

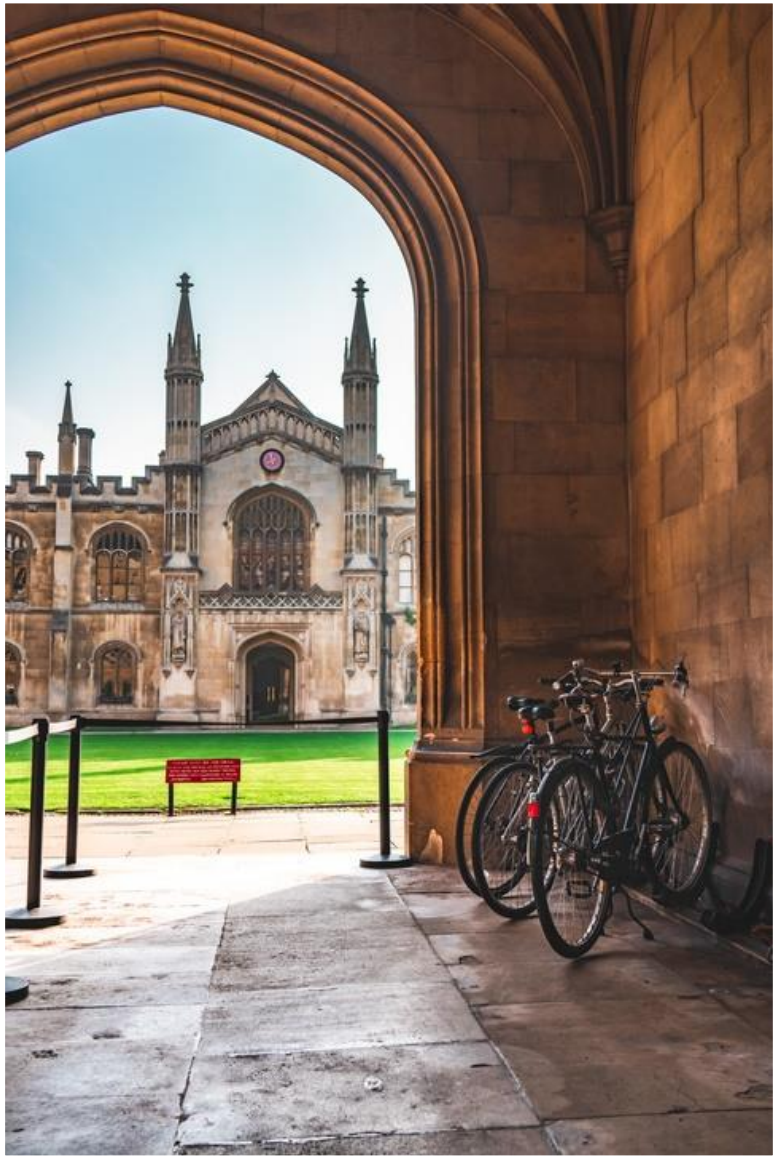
State Authorization

- ED proposes to require that reciprocity agreements, among several new requirements, allow any member State to enforce its own "applicable State laws and regulations outside of the initial approval for State authorization of distance education except for authorization or application fees and processes..."
- ED also proposes that if an institution is authorized to offer distance education under a reciprocity agreement it may be "exempted from initial State authorization or licensure requirements in that State" and "[a]s a condition of participation, the institution must obtain within one year direct authorization from any participating State where it enrolls more than 500 students..."
- ED proposes that the governing board of any entity that oversees a reciprocity agreement may only include representatives from State regulatory and licensing bodies, enforcement agencies, and attorneys general offices.

2024 Program Integrity Rulemaking

Distance Education

- ED proposes creating a virtual location for institutions that includes all students who are being instructed entirely through distance education.
- ED proposes prohibiting clock-hour programs provided via distance education from being offered through asynchronous learning and excluding clock-hour online asynchronous coursework from the definition of "a week of instructional time." Does not impact credit-hour programs.
- ED proposes to define "distance education course" as a course "in which instruction takes place exclusively as described in the definition of distance education in this section notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences.
- ED proposes to require institutions to take attendance "for each course offered entirely through distance education..."



TC Extra Credit

TC Extra Credit | Resources Page

HIGHER EDUCATION RESOURCES

As part of our ongoing commitment to the postsecondary community, Thompson Coburn's higher education practice routinely creates complimentary resources designed to assist institutions with navigating the complexities of the higher education regulatory and policy environment. We have collected a number of these resources on this page, including our most recent webinars, training series, desk guides, whitepapers, and blog posts. We hope you find these resources helpful, and if you have any questions, please do not hesitate to contact us!

WEBINARS/TRAINING RESOURCES

WEBINAR: AFFIRMATIVE ACTION IN HIGHER EDUCATION: IMPACT OF SFFA V. HARVARD AND SFFA V. UNC

This presentation provides an

WEBINAR: ED'S PROPOSED FINANCIAL VALUE TRANSPARENCY AND GAINFUL EMPLOYMENT RULE

On May 19, 2022, the U.S.

WEBINAR: SAFEGUARDING THE DATA AND YOUR COMPLIANCE PROGRAM – USED AND GLBA

Significant revisions to the

THOMPSON COBURN LLP

TC Extra Credit | REGucation Blog

Time to develop protocols for responding to borrower defense claims (despite Sweet and Fifth Circuit injunction)

Jeff Fink Scott Goldschmidt Aaron Lacey September 1, 2023

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On August 7, 2023, the Fifth Circuit Court of Appeals issued a nationwide injunction in *Career Colleges and Schools of Texas v. Cardona*, preventing the U.S. Department of Education (ED) from enforcing the latest version of its borrower defense to repayment (BDR) rule, which was published in 2022 (2022 BDR rule). Meanwhile, ED continues processing BDR claims under the June 2022 settlement reached in the *Sweet v. Cardona* litigation, as well as under the existing BDR rule, which was published by the Trump administration in 2019 (2019 BDR rule). In fact, we have observed a decided

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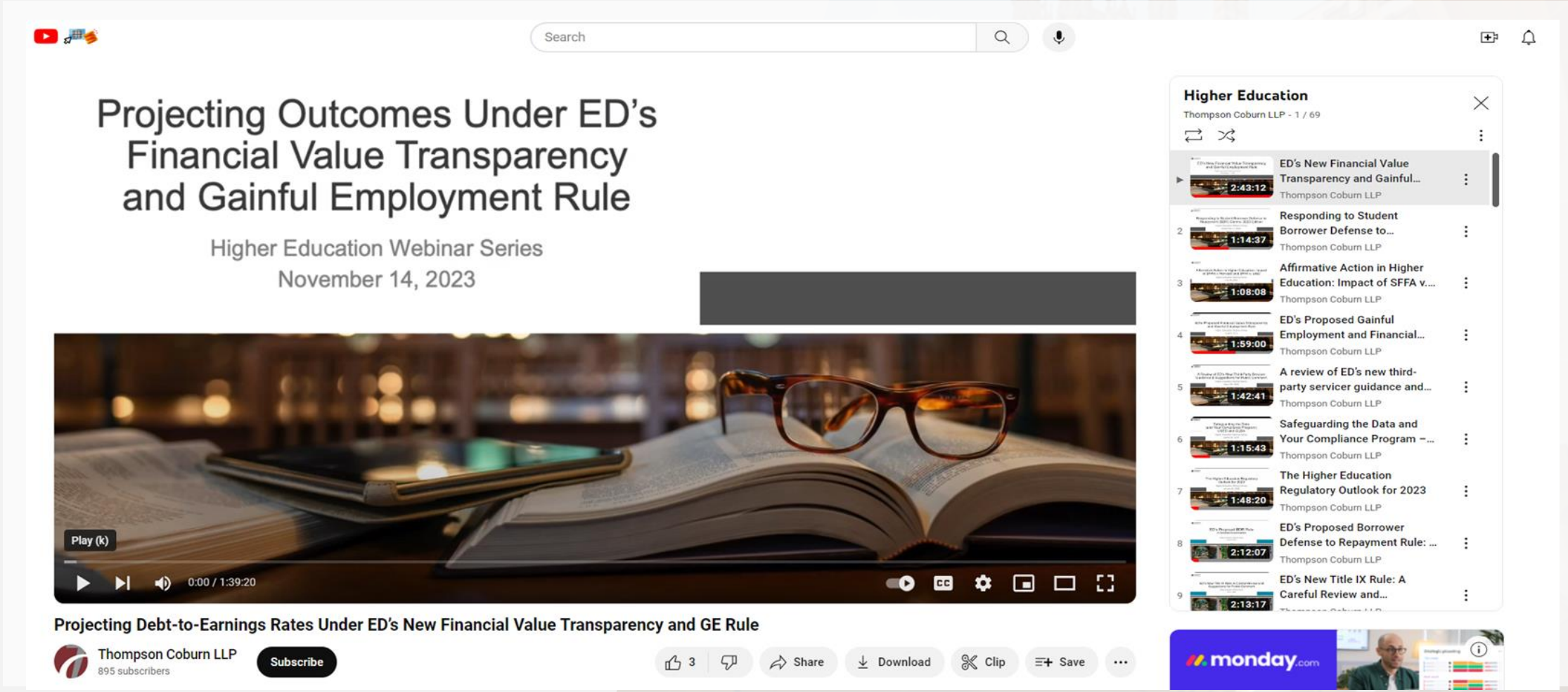

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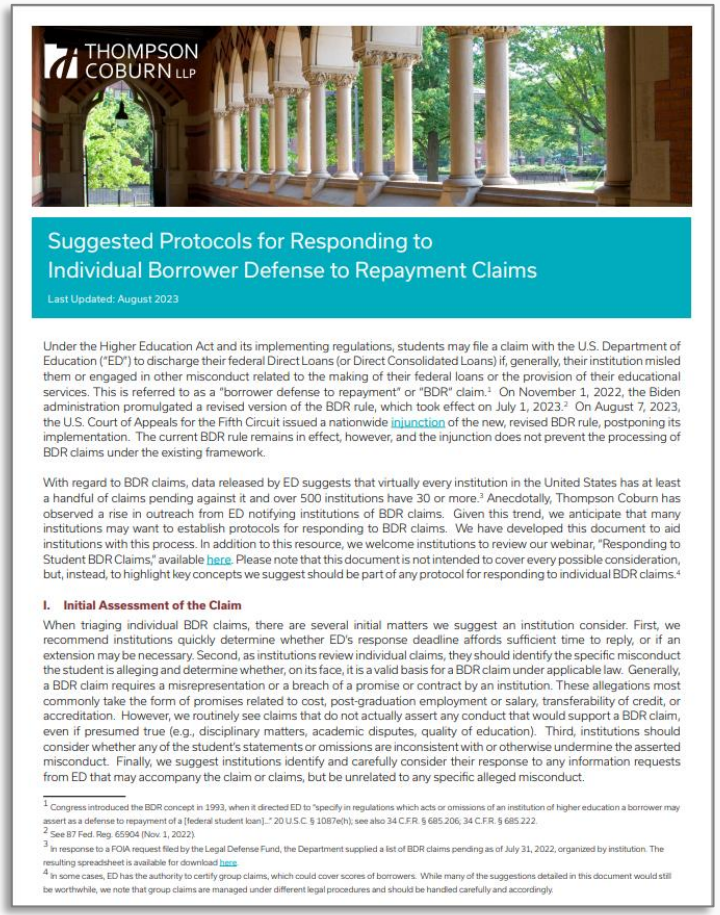

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Suggested Protocols for Responding to Individual Borrower Defense to Repayment Claims

Last Updated: August 2023

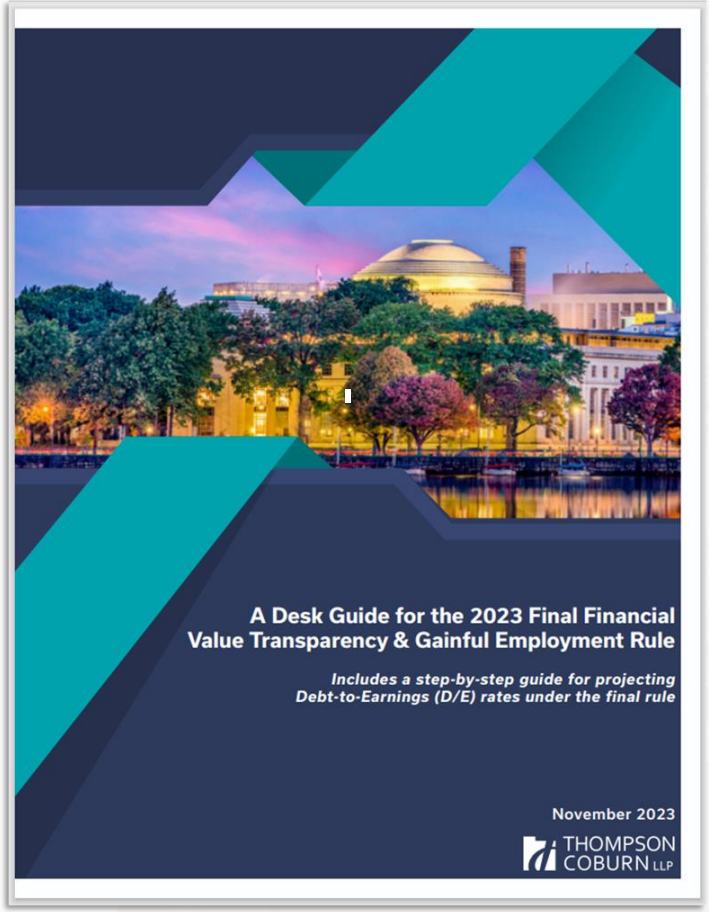
Under the Higher Education Act and its implementing regulations, students may file a claim with the U.S. Department of Education ("ED") to discharge their federal Direct Loans (or Direct Consolidated Loans) if, generally, their institution misled them or engaged in other misconduct related to the making of their federal loans or the provision of their educational services. This is referred to as a "borrower defense to repayment" or "BDR" claim.[1] On November 1, 2022, the Biden administration promulgated a revised version of the BDR rule, which took effect on July 1, 2023.[2] On August 7, 2023, the U.S. Court of Appeals for the Fifth Circuit issued a nationwide injunction of the new, revised BDR rule, postponing its implementation. The current BDR rule remains in effect, however, and the injunction does not prevent the processing of BDR claims under the existing framework.

With regard to BDR claims, data released by ED suggests that virtually every institution in the United States has at least a handful of claims pending against it and over 500 institutions have 30 or more.[3] Anecdotally, Thompson Coburn has observed a rise in outreach from ED notifying institutions of BDR claims. Given this trend, we anticipate that many institutions may want to establish protocols for responding to BDR claims. We have developed this document to aid institutions with this process. In addition to this resource, we welcome institutions to review our webinar, "Responding to Student BDR Claims," available here. Please note that this document is not intended to cover every possible consideration, but, instead, to highlight key concepts we suggest should be part of any protocol for responding to individual BDR claims.[4]

I. Initial Assessment of the Claim

When triaging individual BDR claims, there are several initial matters we suggest an institution consider. First, we recommend institutions quickly determine whether ED's response deadline affords sufficient time to reply, or if an extension may be necessary. Second, as institutions review individual claims, they should identify the specific misconduct the student is alleging and determine whether, on its face, it is a valid basis for a BDR claim under applicable law. Generally, a BDR claim requires a misrepresentation or a breach of a promise or contract by an institution. These allegations most commonly take the form of promises related to cost, post-graduation employment or salary, transferability of credit, or accreditation. However, we routinely see claims that do not actually assert any conduct that would support a BDR claim, even if presumed true (e.g., disciplinary matters, academic disputes, quality of education). Third, institutions should consider whether any of the student's statements or omissions are inconsistent with or otherwise undermine the asserted misconduct. Finally, we suggest institutions identify and carefully consider their response to any information requests from ED that may accompany the claim or claims, but be unrelated to any specific alleged misconduct.

1 Congress introduced the BDR concept in 1993, when it directed ED to "specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a [federal student loan]..." 20 U.S.C. § 1087e(h); see also 34 C.F.R. § 685.206; 34 C.F.R. § 685.222.
2 See 87 Fed. Reg. 65904 (Nov. 1, 2022).
3 In response to a FOIA request filed by the Legal Defense Fund, the Department supplied a list of BDR claims pending as of July 31, 2022, organized by institution. The resulting spreadsheet is available for download here.
4 In some cases, ED has the authority to certify group claims, which could cover scores of borrowers. While many of the suggestions detailed in this document would still be worthwhile, we note that group claims are managed under different legal procedures and should be handled carefully and accordingly.



A Desk Guide for the 2023 Final Financial Value Transparency & Gainful Employment Rule

Includes a step-by-step guide for projecting Debt-to-Earnings (D/E) rates under the final rule

November 2023

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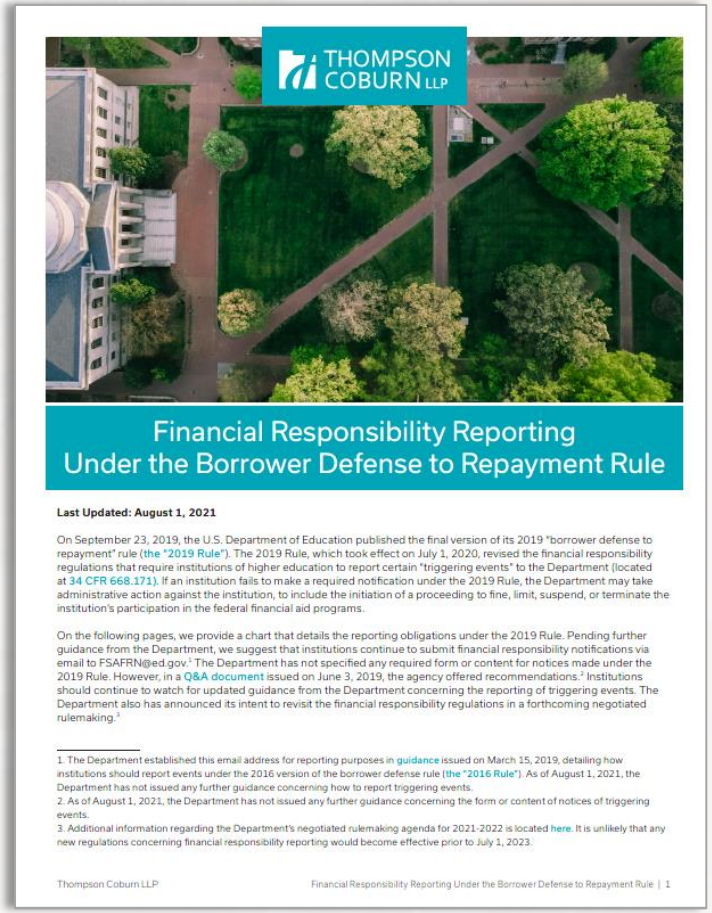

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Financial Responsibility Reporting Under the Borrower Defense to Repayment Rule

Last Updated: August 1, 2021

On September 23, 2019, the U.S. Department of Education published the final version of its 2019 "borrower defense to repayment" rule (the "2019 Rule"). The 2019 Rule, which took effect on July 1, 2020, revised the financial responsibility regulations that require institutions of higher education to report certain "triggering events" to the Department (located at 34 CFR 668.171). If an institution fails to make a required notification under the 2019 Rule, the Department may take administrative action against the institution, to include the initiation of a proceeding to fine, limit, suspend, or terminate the institution's participation in the federal financial aid programs.

On the following pages, we provide a chart that details the reporting obligations under the 2019 Rule. Pending further guidance from the Department, we suggest that institutions continue to submit financial responsibility notifications via email to FSAFRN@ed.gov.[1] The Department has not specified any required form or content for notices made under the 2019 Rule. However, in a Q&A document issued on June 3, 2019, the agency offered recommendations.[2] Institutions should continue to watch for updated guidance from the Department concerning the reporting of triggering events. The Department also has announced its intent to revisit the financial responsibility regulations in a forthcoming negotiated rulemaking.[3]

1. The Department established this email address for reporting purposes in guidance issued on March 15, 2019, detailing how institutions should report events under the 2016 version of the borrower defense rule (the "2016 Rule"). As of August 1, 2021, the Department has not issued any further guidance concerning how to report triggering events.
2. As of August 1, 2021, the Department has not issued any further guidance concerning the form or content of notices of triggering events.
3. Additional information regarding the Department's negotiated rulemaking agenda for 2021-2022 is located here. It is unlikely that any new regulations concerning financial responsibility reporting would become effective prior to July 1, 2023.

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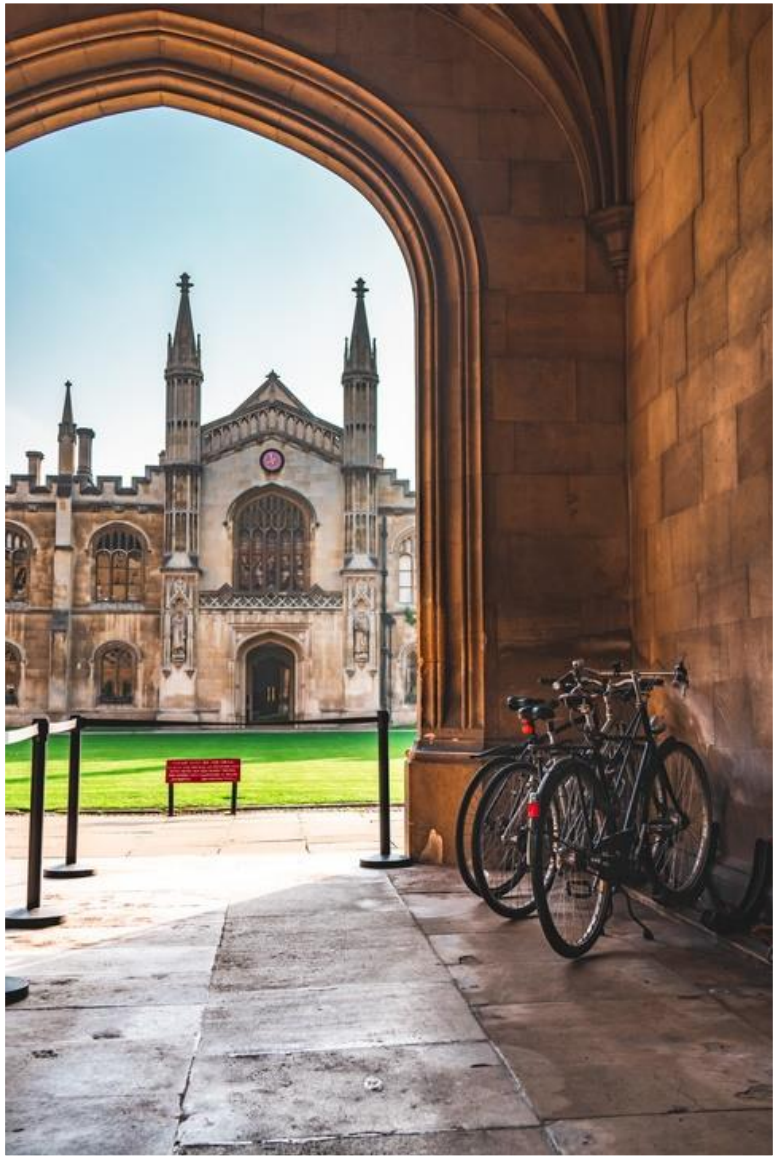

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