

# Legislative Update

TACRAO Summer Meeting July 2024



# State Legislative Topics

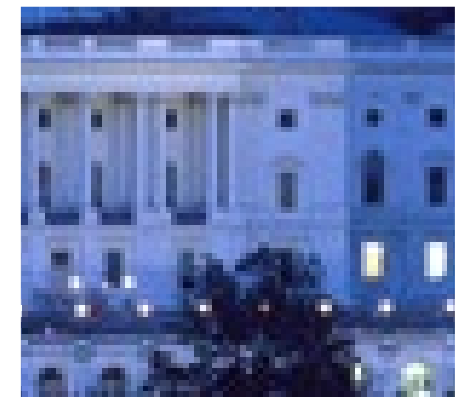
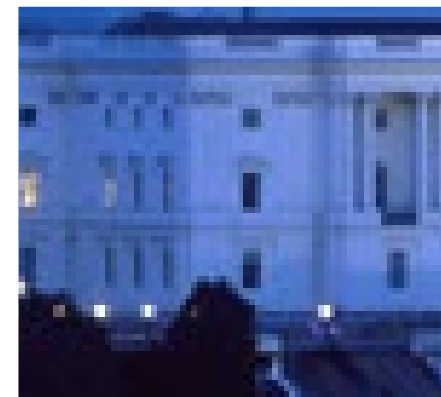
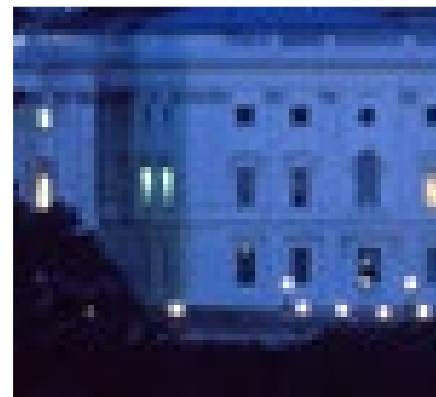
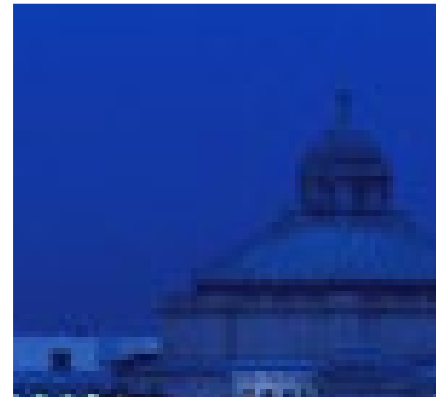
- After a very active regular session and four special sessions last year, Texas is between legislative sessions
- Activity from the Governor's Office and the Texas Attorney General's office
- THECB





# Federal Legislative Topics

- New Title IX Regulations were released in April 2024
- Texas response to the new regulations
- Simplified FAFSA
- Consolidated Appropriations Act – 2024
- Withholding Transcripts
- FLSA’s new overtime rule
- SCOTUS decision on the Chevron Doctrine



# New Title IX Regulations

## Title IX



- Protect against all sex-based harassment and discrimination
- Promote accountability and fairness
- Empower and support students and families
- Regulation related to athletics is still ongoing and proposed amendments received over 150,000 public comments

- New regulations are effective August 1, 2024, and apply to sex discrimination complaints regarding alleged conduct that occurs on or after that date
- DOE website has resources for drafting Title IX nondiscrimination policies

# New Title IX Regulations

## Title IX



- Shifts the focus from sexual harassment to more broadly address sex-based harassment
- Clarifies that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

- Clarifies that the recipient must comply with Title IX in the event of a conflict with State law or FERPA
- Outlines the requirements for designating a Title IX coordinator and grievance procedures

# State of Texas Response to Title IX Amendments

April 29, 2024, Texas Attorney General Ken Paxton sued the Biden Administration over these changes to Title IX. Governor Abbott also wrote a letter to President Biden, condemning the Title IX changes

May 8, 2024, the Governor sent letters to Texas' public university systems and community colleges directing them not to comply with the recent revision of Title IX and to refrain from implementing any new system-wide policy



May 14, 2024, the Texas Attorney filed an amended complaint along with a motion for a stay of agency action and a preliminary injunction in the lawsuit.

22 US states have now filed suit against the US Secretary of Education and the US Department of Education, alleging the new regulations are illegal

Amended complaint: <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Title%20IX%20Amended%20Complaint.pdf>

Stay and preliminary injunction motion: <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Title%20IX%20PI%20Motion.pdf>

Governor's letter to the president: <https://gov.texas.gov/uploads/files/press/O-BidenJoseph1.pdf>

# State of Texas Response to Title IX Amendments

## Title IX



- Last year, state Attorney General Ken Paxton sued to block guidelines that the Biden administration issued in 2021 to extend federal anti-discrimination protections to LGBTQIA+ students.
- In June 2024, a federal judge ruled in Paxton's favor, saying that the Biden administration lacked the authority to make the changes.

- This ruling does not affect the implementation of the new Title IX regulations.

# Institutions Respond to SB 17

In May 2024, Texas institutions were asked about their compliance with SB 17, which prohibits public institutions of higher education from undertaking diversity, equity, and inclusion initiatives.

The Texas Senate indicated that institutions could lose their funding or face legal consequences if they weren't following the law, which went into effect in January 2024.





# Institutions Respond to SB 17

## Actions reported :

- Closed multicultural offices and removed or reassigned DEI staff
- Stopped requiring diversity statements in consideration for positions
- Eliminated required DEI training for students, faculty, and staff. Those who still allow access to DEI material have made DEI training optional and completely voluntary.

## Concerns from institutions:

- Unsure about how to respond to DEI questions on federal grant applications
- DEI standards of some accreditation agencies

# THECB News



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THECB released a report to satisfy a requirement of Senate Bill 25, which outlines measures to facilitate the transfer, academic progress, and timely graduation of students in public higher education.

THECB created a task force to provide opportunities, remove barriers, expand healthcare programs, and provide students with tools to succeed in the field.



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Governor Abbott appointed 8 university student regents and a student representative to the THECB.

Governor Abbott appointed one new member and two returning members to the THECB and named a vice chair of the board



# THECB News



Changes that impact Dual Enrollment students were made to the administrative code and became effective May 16, 2024.



19 Tex. Admin. Code §4.54 Exemption -

PSAT and PLAN scores have been removed from this section for student eligibility to enroll in Dual Credit courses.

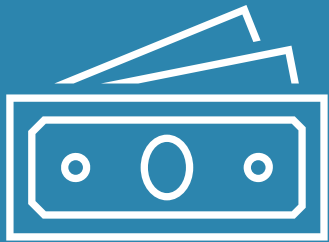


19 Tex. Admin. Code §4.85(a)(2) Dual Credit Requirements - Eligible Courses, indicates a dual credit course offered by an institution must be in the approved undergraduate course inventory of the institution.



Notification from THECB

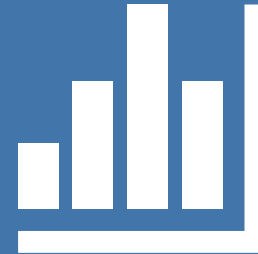
# Simplified FAFSA News



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DOE implemented the FAFSA College Support strategy earlier this year to help schools process student records quickly and accurately.

Many institutions pushed their May 1<sup>st</sup> decision deadlines later to allow students more time.



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In Texas, a non-profit called Trellis received DOE funding to assist Texas colleges and universities with student FAFSA completion.

Trellis will host information sessions for completing the FAFSA to students and their families June - August 2024



# Consolidated Appropriations Act

- Effective July 1, 2024, for the 2024-2025 award year
- A public institution of higher education may not charge more than its in-state tuition rate to citizens of the three Freely Associated States
  - Federated States of Micronesia
  - Republic of the Marshall Islands
  - Republic of Palau
- Citizens of the three Freely Associated States are eligible for three Title IV, HEA programs
  - Pell Grants
  - Federal Work Study
  - Federal Supplemental Educational Opportunity Grant



# Withholding Transcripts

## Federal Regulation Changes on Financial Responsibility and Administrative Capability

The federal regulation states:

“668.14(b)(33) To provide that an institution may not withhold official transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution’s administration of the title IV, HEA programs, or any fraud or misconduct by the institution or its personnel;

668.14(b)(34) To require an institution to provide an official transcript that includes all the credit or clock hours for payment periods in which 1) the student received title IV, HEA funds; and (2) all institutional charges were paid, or included in an agreement to pay, at the time the request is made.”

## What does this mean?

Institutions will need to set policies on how, when, and under what circumstances they will hold transcripts – whether that means the full transcript or a partial one.

Effective July 1



# Withholding Transcripts

- The definition of “error” includes but is not limited to:
  - Determining student eligibility for Title IV funds and/or errors that result in a miscalculation of the amount of aid
  - Return of Title IV funds errors
  - Disbursement delays that are the fault of the institution
- The definition of “other negative action” includes but is not limited to:
  - Withholding transcripts or degrees
  - Registration holds
  - Referrals to collections

## Withholding transcripts following a school error

## Withholding transcripts for non-payment

- The requirement applies when any amount of Title IV, HEA funds is applied to a student’s account for a payment period and institutional charges for that period have been fully paid.
  - Funds paid to a student’s account will be applied to the oldest outstanding charges
  - Federal Work Study funds that are paid directly to a student and not applied to their student account do **NOT** fall under this requirement
- If a student or parent enters into a payment plan or similar agreement and is making payments in accordance with that agreement, the amount of the agreement is added to funds that are fully paid when determining whether charges have been paid.

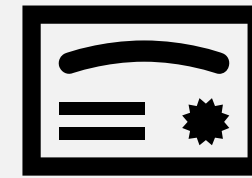
# Withholding Transcripts

- If a payment is missed, institutions are not required to include the amount associated with the payment agreement until the student is once again making payments in accordance with the agreement
- Policies must be consistent for all students
- Institutions are allowed to wait for the student to make their first payment in the agreement before releasing the transcript

- Institutions are allowed to release partial transcripts that do not include credits for a payment period in which the student did not receive Title IV, HEA funds or in which institutional charges are not paid
- Institutions may stop withholding transcripts to comply with requirements
- The DOE does not maintain requirements concerning partial transcript holds and institutions are responsible for complying with state or accreditation requirements

- The new regulations never require an institution to confer a degree or credential to a student who has not paid an outstanding balance except in the case of institutional error in administration of Title IV funds
- If a student's balance is due to institutional error or fraud the institution **MUST** provide the student with their degree or credential otherwise earned

Payment Plans



Partial Transcript Holds

Degree or  
Recognized  
Credential



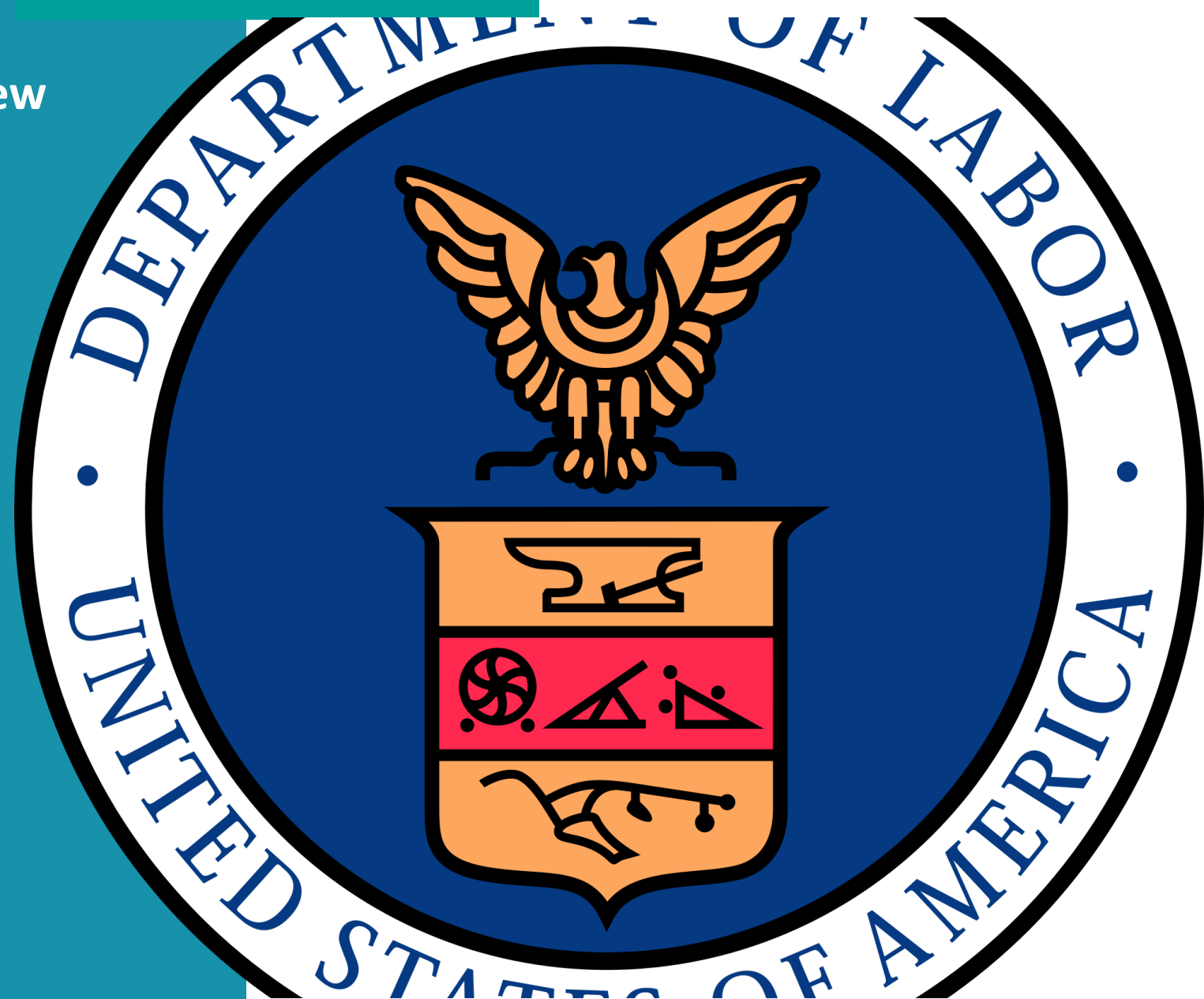


## US Department of Labor – FLSA’s New Overtime Rule

The US Department of Labor published their final rule in April to revise exemptions of its overtime pay regulations under the Fair Labor Standards Act.

FLSA requires overtime pay at time-and-one-half for employees unless they are exempted by the statute and its regulations.

The final rule will be enacted in a two-step process – the first step was due to occur on July 1 and the second step on January 1, 2025.





## US Department of Labor – FLSA’s New Overtime Rule

The final rule requires that employees be paid overtime when working more than 40 hours per week unless

They meet a salary basis test by being paid above a new threshold as of July 1, 2024 of \$43,888 annually, then increasing to \$58,656 as of January 1, 2025; and

They meet a duties test that requires that they primarily work in a delineated “bona fide executive, administrative, or professional capacity.”

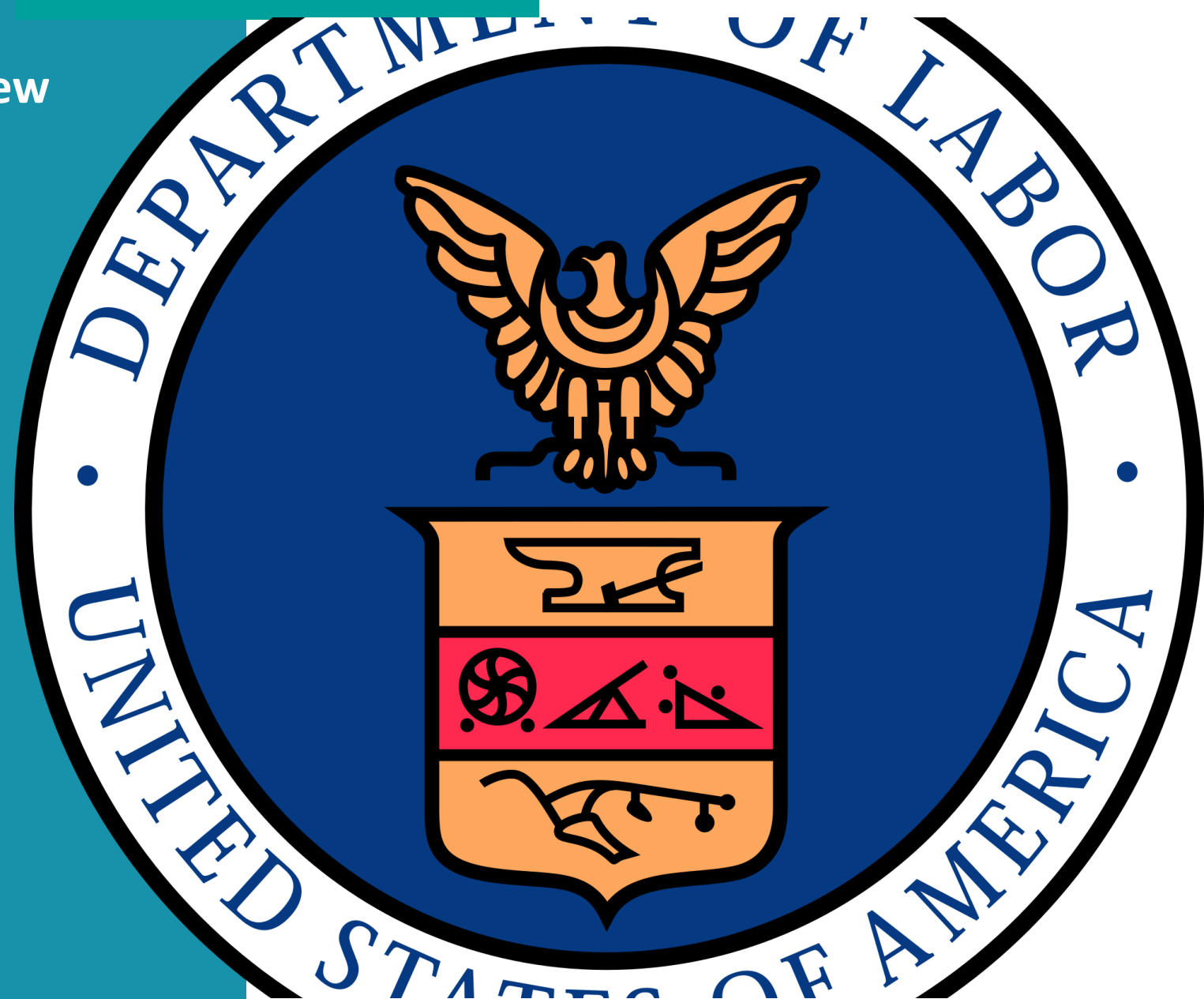
## US Department of Labor – FLSA’s New Overtime Rule

The final rule also raises the salary threshold for “highly compensated” employees who satisfy some, but not all of the duties test applicable to either the professional, computer professional, executive, or administrative classification may be exempted from overtime pay.

The new threshold is \$132,964 as of July 1 and will raise to \$151,164 as of January 1, 2025.

The salary thresholds under the final rule will automatically increase every three years based on data from the Bureau of Labor Statistics; however, the DOL will have the ability to delay a scheduled increase in the event of “unforeseen economic or other conditions.”

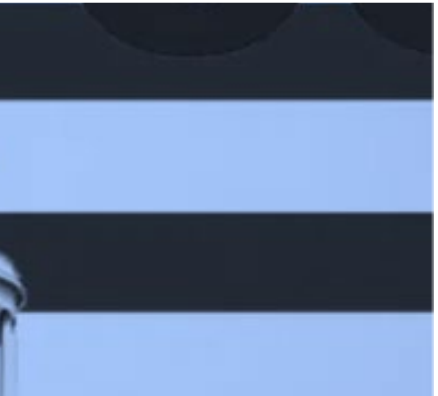
Faculty and most computer professionals remain exempt under the new rules.



# ■ US Department of Labor – ■ FLSA’s New Overtime Rule

As of Friday, June 28<sup>th</sup>, a federal judge in Texas temporarily barred the Department of Labor from enforcing these new overtime rules in Texas. US District Judge Sean Jordan said that the DOL is focused on a worker’s salary level, rather than on their job duties as indicated in the FLSA’s executive, administrative, and professional exemption.

The State of Texas claims that the DOL’s overtime expansion violates the states’ rights to structure the pay of state employees and they are seeking to strike it down nationwide.



Sources: <https://www.texasattorneygeneral.gov/sites/default/files/images/press/DOL%20Overtime%20Rule%20Complaint.pdf>  
<https://www.reuters.com/legal/texas-wins-court-block-biden-overtime-pay-rule-2024-06-29/#:~:text=Jordan%2C%20an%20appointee%20of%20Republican,by%20the%20Republican%2Dled%20state.>

# US Supreme Court Decision – Chevron Doctrine



- The Chevron Doctrine was born out of a landmark decision in the 1984 case of Chevron v. Natural Resources Defense Council.
- The Chevron Doctrine is an administrative law principle that required courts to defer to a federal agency's interpretation of an ambiguous or unclear statute that Congress delegated to the agency to administer, as long as it was reasonable.

Sources: <https://www.scotusblog.com/2024/06/supreme-court-strikes-down-chevron-curtailing-power-of-federal-agencies/>  
<https://www.insidehighered.com/news/government/student-aid-policy/2024/07/02/supreme-court-decision-weakens-education-department>

# US Supreme Court Decision – Chevron Doctrine

By a vote of 6 – 3 SCOTUS overruled the original decision and called the doctrine “fundamentally misguided.”

Dissenting opinions emphasized the importance of allowing agencies to interpret regulatory laws.

This ruling weakens the Education Department as well as other federal agencies.





Information about the redesigned ApplyTexas:

<https://www.highered.texas.gov/our-work/supporting-our-institutions/redesigned-applytexas/>

Information about Gainful Employment regulations:

<https://www.acenet.edu/Documents/Summary-Institutional-Accountability-Regulations-2023.pdf>

# Legislative Issues Committee

2023 - 2024

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Texas Tech University

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Julio Reyes,  
Laredo College

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Southwestern University