



**CFO/HR Conference**  
**June 19-20, 2024**  
**Sweet Briar College**

**Wednesday, June 19, 2024**

- 9:00 – 9:30      **Check-in/Continental Breakfast** – Wailes Conference Center , Boxwood Lobby, main level
- 9:30 – 10:00    **Welcome and Introductions** – Boxwood Ballroom, main level
- 10:00 – 11:00    **Plenary Session – *Navigating the Risks of Closing Academic Departments or Programs*** – Boxwood Ballroom  
Hal Johnson, Williams Mullen
- 11:00 – 11:30    **Vendor Fair** – Conference Rooms A & B, lower level

**Thank you to our Strategic Partners and exhibitors in attendance!**



**Wednesday, June 19, 2024 (continued)**

11:30 – 12:30

**Dual Tracks**

**CFO** – Patio Room D, lower level

***Mid-Year Capital Market and Economic Update***

Ken Barnes, SageView

**HR** – Patio Room C, lower level

***Discussion of New Overtime Rule and Its Implications***

Stephanie Karn, Williams Mullen

12:30 – 1:45

**Lunch** – Boxwood Ballroom

**Thank you to our lunch sponsors!**



1:45 – 2:45

**Dual Tracks**

**CFO** – Patio Room D

***Maximize the Use of Historic Tax Credits in Virginia***

Beth Schulhof, Brown Edwards  
William Roach, Commonwealth Advisors  
Capital  
Ken Copeland, Vice President for  
Business Affairs & Finance, Hampden-  
Sydney College

**HR** – Patio Room C

***Your Retirement Plan: Resources and Considerations for Recruiting and Retaining Employees***

Jordan Smith, Millennium Advisory  
Services

2:45 – 3:45

**Dual Tracks**

**CFO** – Patio Room D

***A Legal Perspective on Artificial Intelligence Risk, Cyber Insurance, Privacy, and Technology Concerns in 2024***

Beth Burgin Waller, Woods Rogers

**HR** – Patio Room C

***2024 Updates to Title IX***

Martha Compton, Grand River  
Solutions

3:45 – 4:15

**Vendor Fair and Afternoon Break** – Conference Rooms A & B

4:15 – 5:15

**Dual Tracks**

**CFO** – Patio Room D

**HR** – Patio Room C

***Using the Direct Pay Investment Tax Credit Option (ITC) to Meet Your Sustainability Goals and Reduce Your Deferred Maintenance***  
Kevin DeLeon, Schneider Electric

***Recruiting and Retaining Talent in the Post-Pandemic World***  
J. Scott Derrick, Spelman Johnson

6:15 – 7:00

**Reception** – Pannell Gallery, Anne Gary Pannell Center

**Thank you to our reception sponsor!**



7:15

**Dinner** – Wailes Lounge, Wailes Conference Center

**Thank you to our dinner sponsor!**



**Thursday, June 20, 2024**

7:00

**Sunrise Yoga with Sue Carter** – Conference Room A, Wailes Center

8:15 – 8:45

**Continental Breakfast** – Boxwood Lobby

8:45 – 9:45

**Plenary Session – *Unleashing the Power: Current Trends in Mental, Behavioral Health, and Well-being on Employee Performance and Organizational Outcomes*** – Boxwood Ballroom  
Kassi O'Brien, Scott Insurance  
Dina Fonzone, Scott Insurance

9:45 – 11:15

**Dual Tracks – Roundtable Discussions**

**CFO** – Patio Room D

**HR** – Patio Room C

11:15 – 12:15

**Boxed Lunches and MEP Orientation I** – Boxwood Ballroom

12:15 – 5:00

**MEP Orientation II** – Wailes Lounge

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# NAVIGATING THE RISKS OF CLOSING ACADEMIC DEPARTMENTS OR PROGRAMS

Harold E. Johnson

**WILLIAMS MULLEN**

# PRESENTER



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## **Four Categories of Risk Associated with Program Closure**

1. Enterprise Risk
2. Operational Risk
3. Reputational Risk
4. Legal and Regulatory Risk

## **Tips and Advice for Program Closure**

- What is the risk of doing nothing?
  - Can you afford to maintain underperforming programs?
- What impact will closing programs have?
  - Cost-savings are not always immediate
  - Closing programs can cost money in the short-term
- Importance of Data
  - *Internal* – enrollment by program, costs vs. revenues, etc.
  - *External* – market-driven analysis



- What impact will program closure have on...
  - Relationships with Faculty and Staff?
  - Student Enrollment and Retention?
  - Relationships with Donors?
  - Accreditation?



- Can you mitigate these operational risks?
  - Objective and Deliberate Process
    - Faculty Involvement in Evaluation of Programs?
    - Navigating Faculty Handbook?
  - Timing of Announcement and Changes
  - Messaging and Communications Strategy
    - Different strategies for Different Audiences



- Negative publicity in community at large.
  - Less of a concern than it was a few years ago.
- Real concern is impact on student enrollment/recruitment.
  - Again, development of a messaging strategy is vital.

- Faculty Contracts and Handbooks
- Employment Law – (WARN Act, COBRA, etc.)
- Revised Title IV Regulations on Financial Accountability
  - Financial Warning Signs and Financial Exigency
  - Department’s Requirement of Financial Protection
  - Cutting Programs and the 25% Rule



- Start Early and Plan Ahead
  - Requirements of Faculty Handbooks
    - Deadlines for renewal of faculty appointments
    - Processes for program closure
    - Will Board action comply with or supercede Handbook?
  - Importance of Objective Criteria and Process

## TIPS AND ADVICE



- Messaging
  - How transparent can you be?
- Don't Let The Threat of Litigation Drive Your Decision-Making.
- Consult with Counsel Early On!



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*Please note: This presentation contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Individuals with particular needs on specific issues should retain the services of competent counsel.*



# Midyear Capital Market and Economic Update

June 2024

Ken Barnes, CFP<sup>®</sup>, CIMA<sup>®</sup>, Senior Investment Consultant



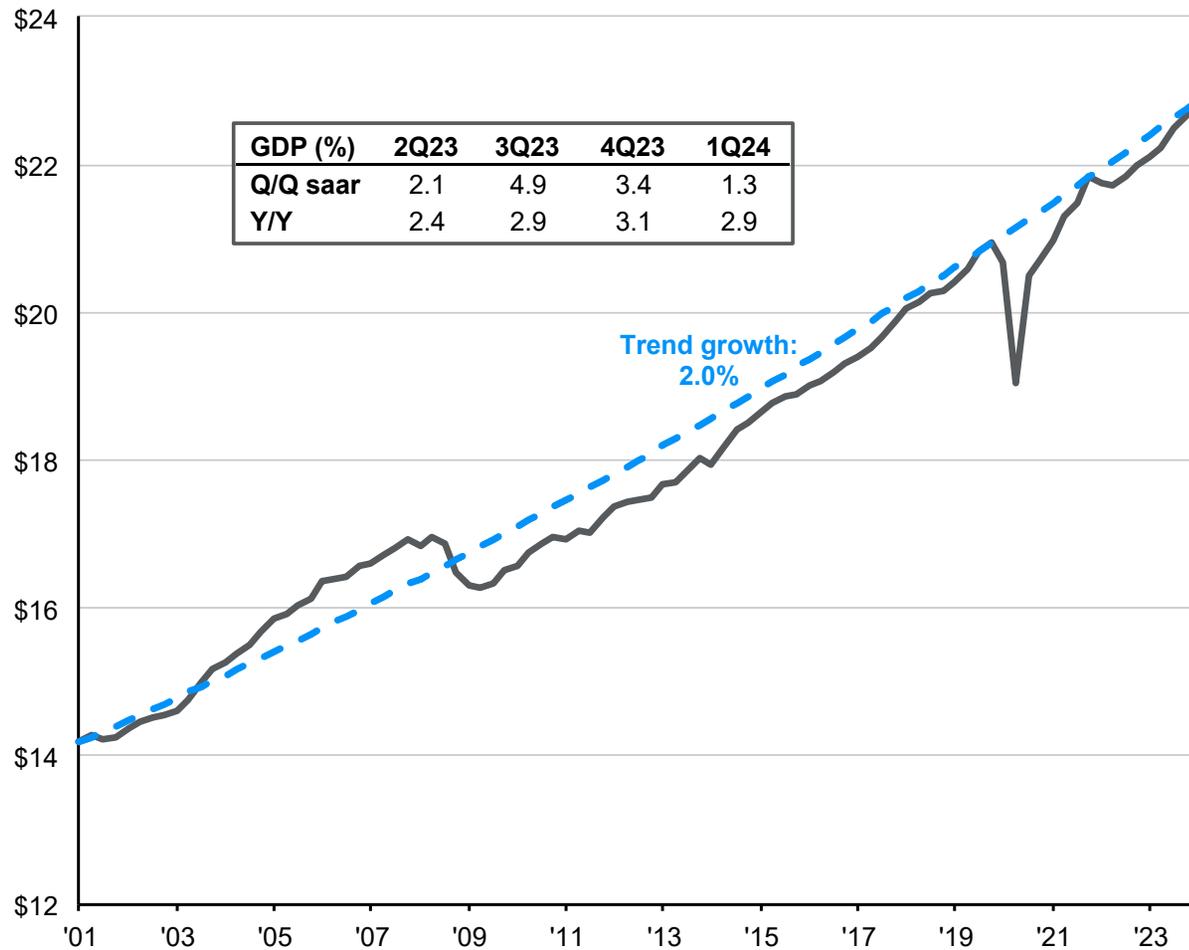
SEE WHERE YOU'RE GOING

# ECONOMIC GROWTH

The U.S. economy ended 2023 on a high note, with the fourth quarter marking the sixth consecutive quarter of growth at or above 2%. While the economy may struggle to match last year's impressive performance, 2024 looks set to be another year of expansion. Overall, the U.S. economy remains on a soft-landing track, although last year's momentum looks set to fade. That said, with a U.S. election on the horizon, high policy rates, and elevated geopolitical tension, risks remain that could knock the U.S. economy off its steady path.

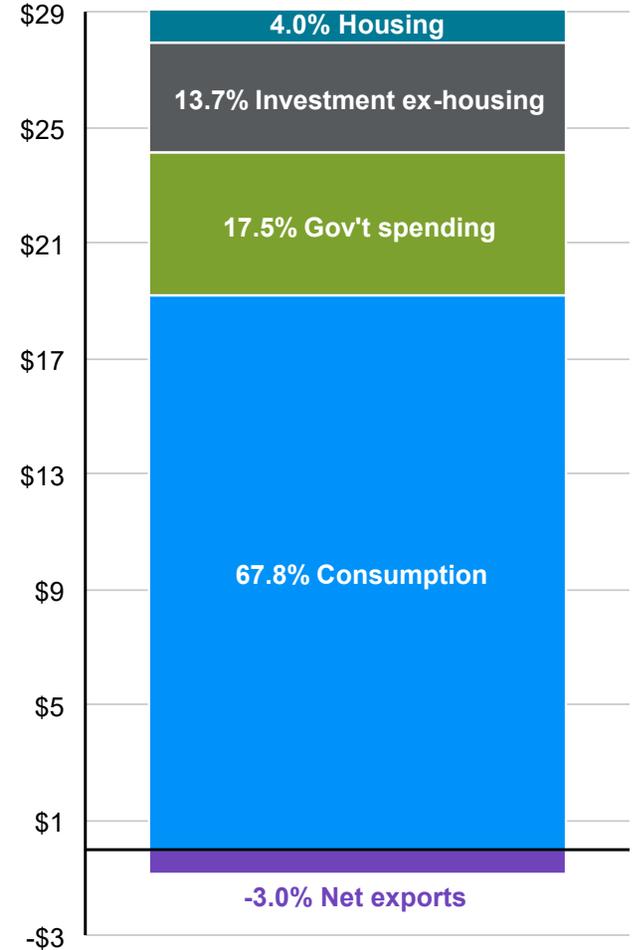
## Real GDP

Trillions of chained (2017) dollars, seasonally adjusted at annual rates



## Components of GDP

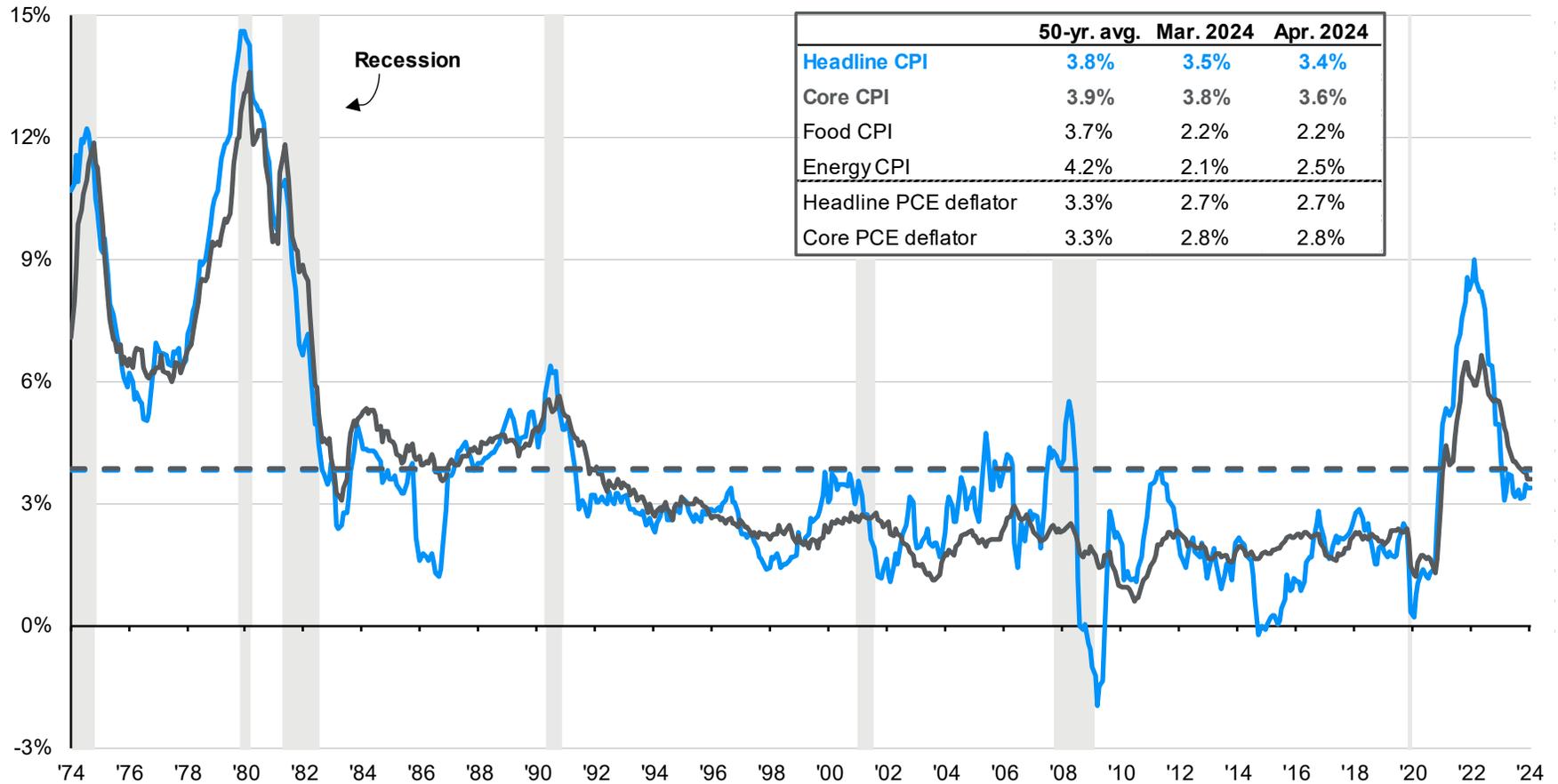
1Q24 nominal GDP, USD trillions



Source: BEA, FactSet, J.P. Morgan Asset Management. Values may not sum to 100% due to rounding. Trend growth is measured as the average annual growth rate from business cycle peak 1Q01 to business cycle peak 4Q19. Guide to the Markets - U.S. Data are as of March 31, 2024..

# INFLATION – CPI AND CORE CPI

The Consumer Price Index held flat in May though it increased 3.3% from a year ago. Both numbers were 0.1 percentage point below market expectations. Prior to this announcement, the FOMC noted the risks of achieving both their inflation and unemployment goals “have moved toward better balance,” but “there has been a lack of further progress toward the Committee’s 2% inflation objective.

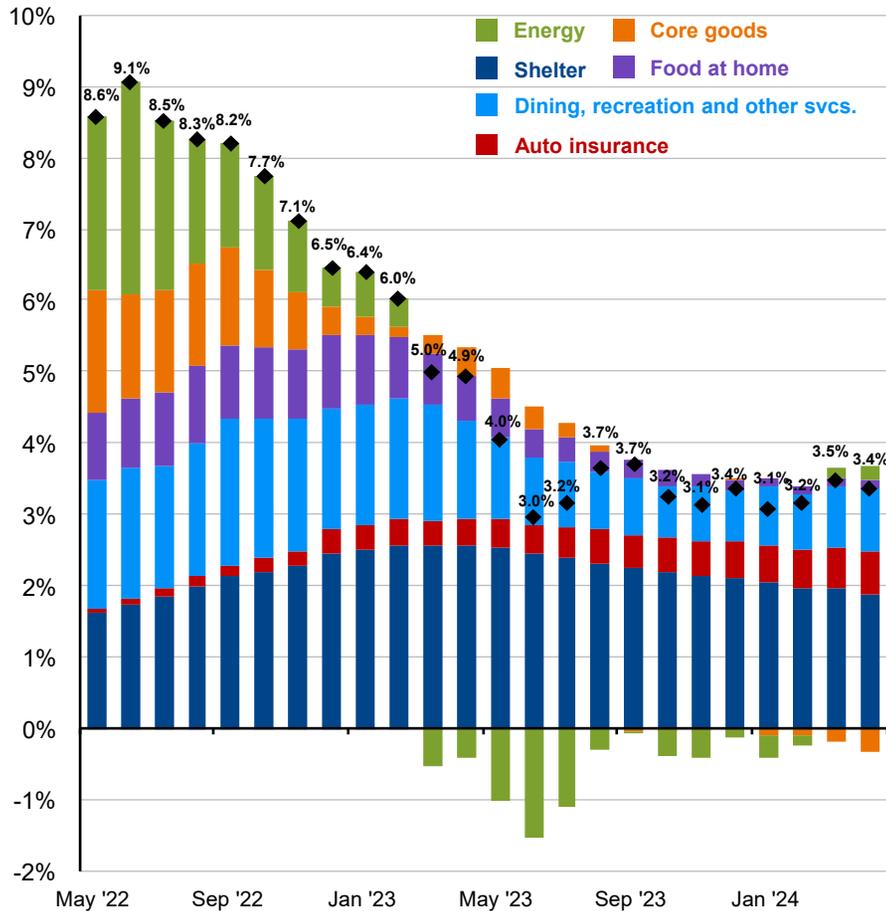


# INFLATION – CPI COMPONENTS

Stalling progress on disinflation in recent months has sparked concerns that inflation may be sticky above the Fed’s target. However, stable supply chains, moderating wage growth and substantial decreases in shelter and auto insurance prices should allow inflation to continue its slow descent to 2%.

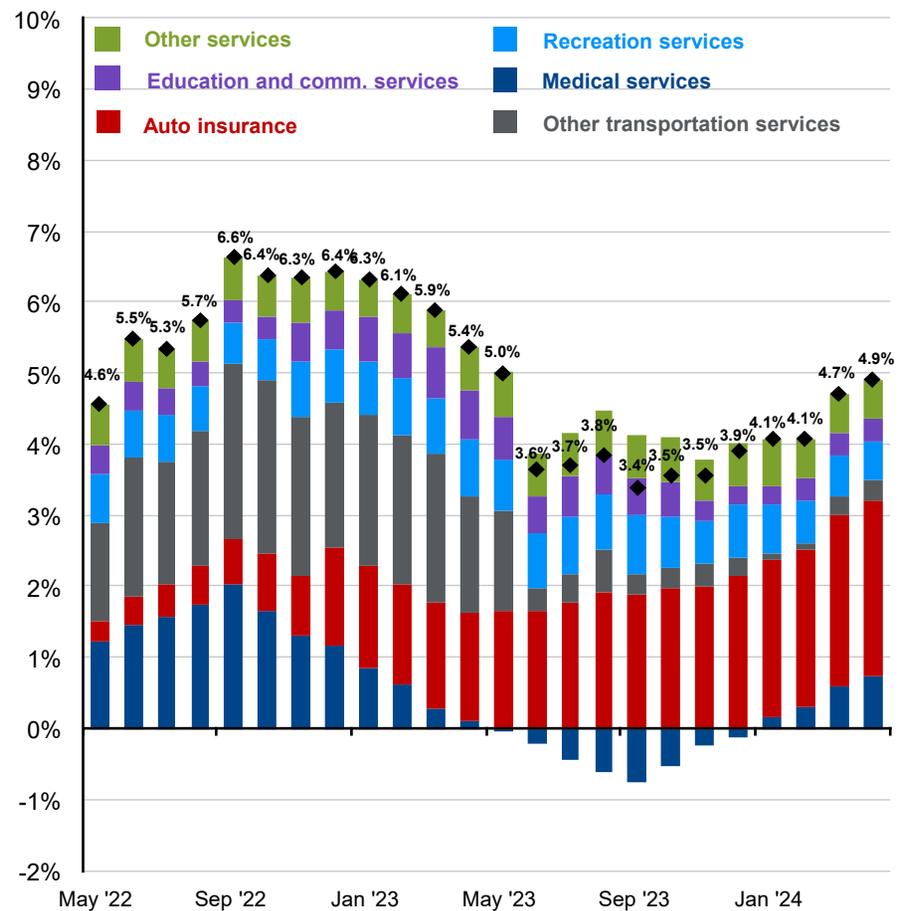
## Contributors to headline CPI inflation

Contribution to y/y % change in CPI, non-seasonally adjusted



## Contributors to core services ex-shelter CPI inflation\*

Contribution to y/y % change in custom CPI index, non-seasonally adj.

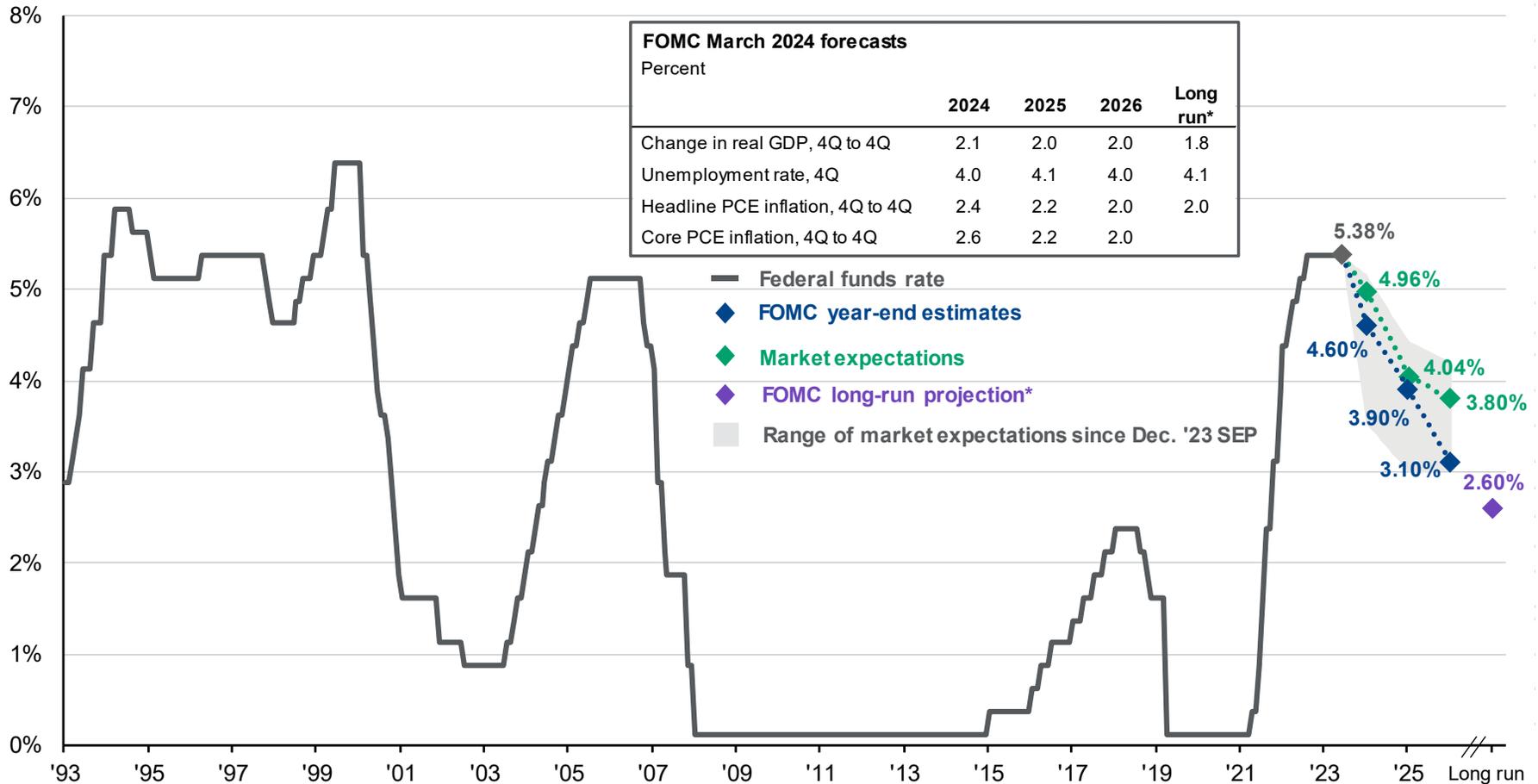


Source: BLS, FactSet, J.P. Morgan Asset Management. Contributions mirror the BLS methodology on Table 7 of the CPI report. Values may not sum to headline CPI figures due to rounding and underlying calculations. \*Core services ex-shelter CPI is a custom index using CPI components created by J.P. Morgan Asset Management. (Left) “Shelter” includes owners’ equivalent rent, rent of primary residence and home insurance. Guide to the Markets – U.S. Data are as of March 31, 2024.

# INTEREST RATES - EXPECTATIONS

Two takeaways from the May FOMC meeting:

1. The Federal Reserve will remain on the sidelines for longer than previously expected. "...readings on inflation have come in above expectations. It is likely that gaining such greater confidence will take longer than previously expected."
2. The next move is still likely to be a rate cut. "I think it's unlikely that the next policy rate move will be a hike. I'd say it's unlikely. You know, our policy focus is really what I just mentioned, which is how long to keep policy restrictive."

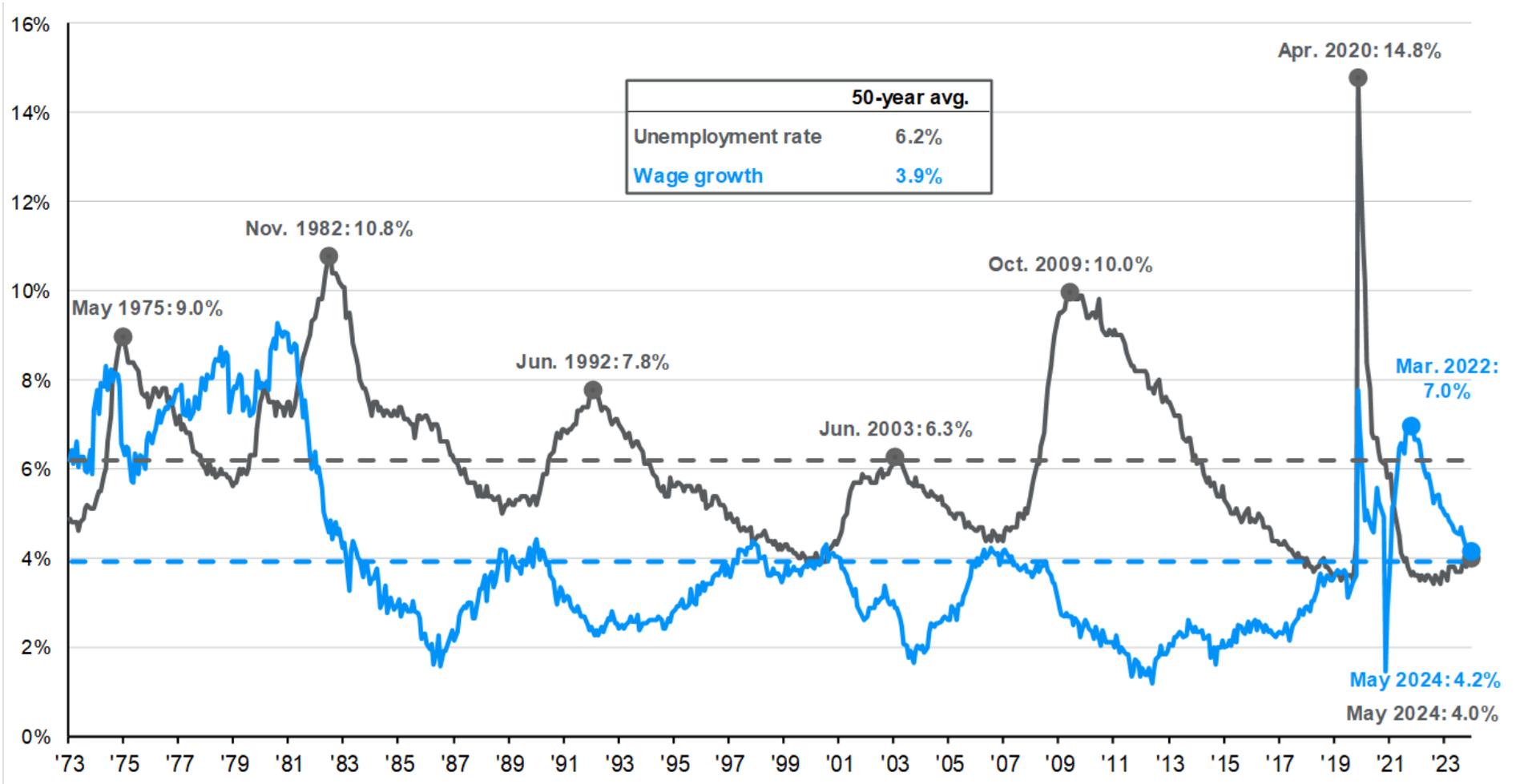


Source: BLS, FactSet, J.P. Morgan Asset Management.

CPI used is CPI-U and values shown are % change vs. one year ago. Core CPI is defined as CPI excluding food and energy prices. The Personal Consumption Expenditure (PCE) deflator employs an evolving chain-weighted basket of consumer expenditures instead of the fixed-weight basket used in CPI calculations.

# THE LABOR MARKET

The US labor market added more jobs than expected in May. The May jobs report showed the labor market added 272,000 nonfarm payroll jobs in May, significantly more additions than the 180,000 expected by economists. Wages, considered an important metric for inflation pressures, increased 4.1% year over year, reversing a downward trend in annual gains from the month prior. Wage growth, on the other hand, should moderate in the year ahead as a slowing economy and declining corporate profits ease upward pressure on wages.



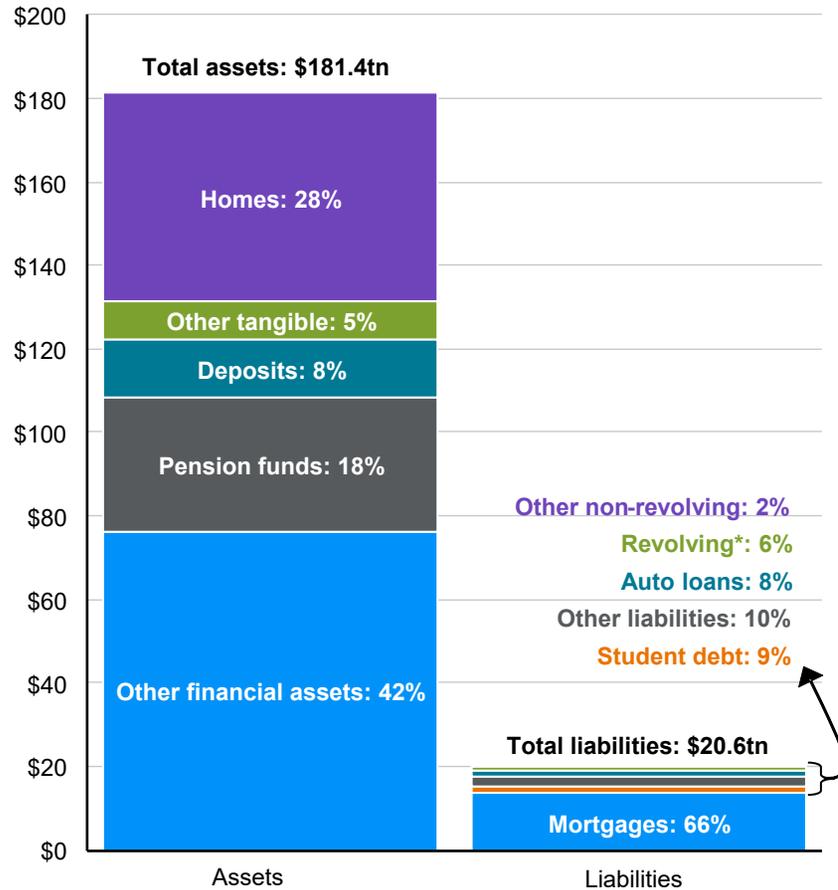
Source: BLS, FactSet, J.P. Morgan Asset Management. Private production and non-supervisory jobs represent just over 80% of total private nonfarm jobs.

# US CONSUMER – BALANCE SHEET

Consumer balance sheets held up remarkably during the pandemic thanks to massive fiscal support. The household debt service ratio, which is the percent of after-tax income used to make payments on mortgages and other consumer debt, declined to a 40-year low during the pandemic. Since that time, aggressive Fed tightening has contributed to higher household borrowing costs and a rise in this metric. The bottom right, shows flow of auto, credit card, and student loans into 30-day delinquency. After remaining flat for most of the prior decade, delinquencies are starting to increase for auto and credit card loans.

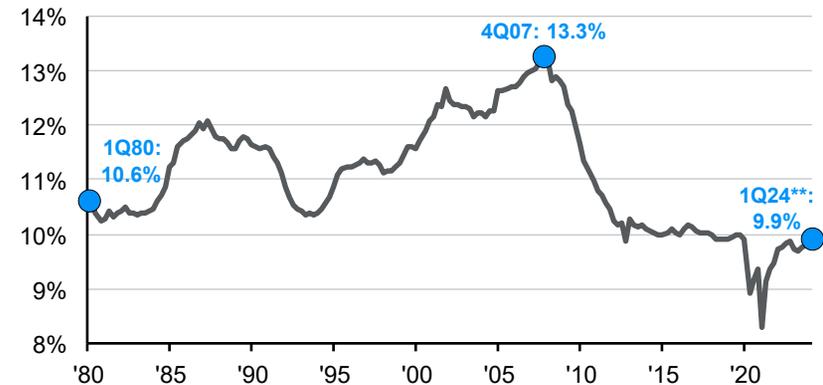
## Consumer balance sheet

1Q24, USD trillions, not seasonally adjusted



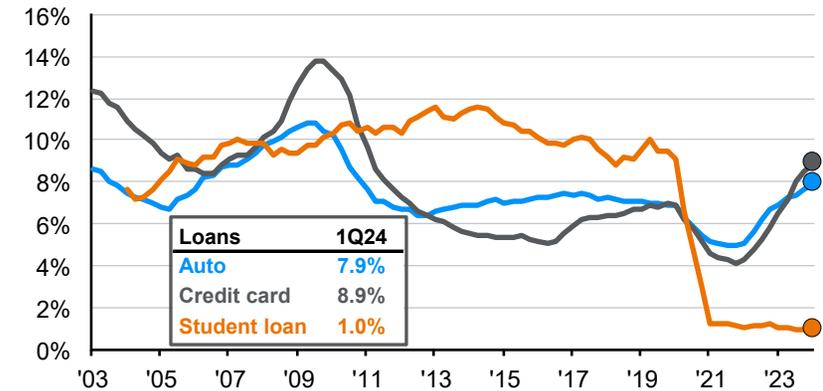
## Household debt service ratio

Debt payments as % of disposable personal income, SA



## Flows into early delinquencies

% of balance delinquent 30+ days

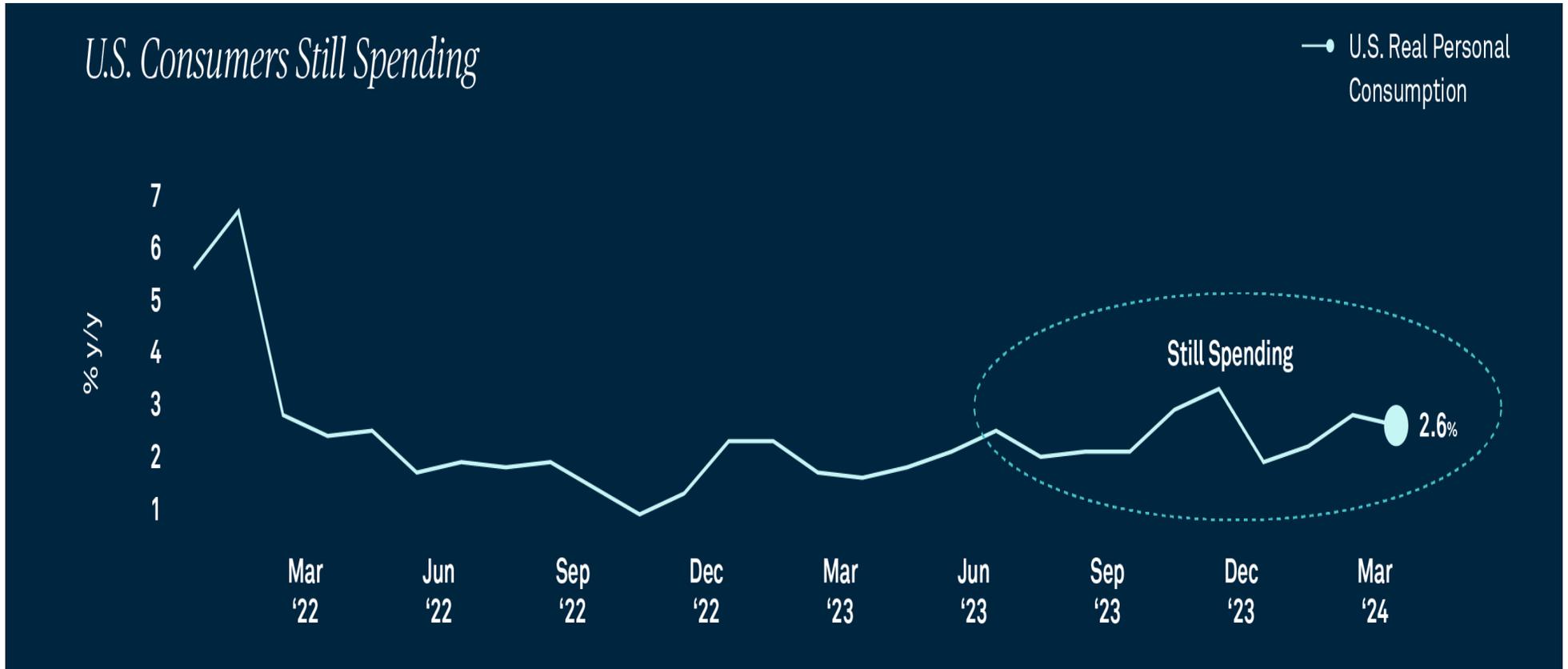


Source: FactSet, FRB, J.P. Morgan Asset Management; (Top and bottom right) BEA.

Data include households and nonprofit organizations. SA – seasonally adjusted. \*Revolving includes credit cards. Values may not sum to 100% due to rounding. \*\*1Q24 figures for debt service ratio are J.P. Morgan Asset Management estimates.

# US CONSUMER – STILL SPENDING

The resilience of the U.S. economy is defying expectations this year as consumers continue to spend in the face of higher prices. However, recent signs of weakness, such as slowing demand for consumer loans, could signal that consumers are finally feeling the pain of higher interest rates. Because consumer spending accounts for roughly 70% of U.S. GDP, it will be a key determinant in the economy's ability to continue outperforming the rest of the world. At the moment, we believe there is not enough evidence to suggest consumer resilience is collapsing. Unless there are further downward revisions or signs of weakness in spending, the resilience of the U.S. consumer will likely continue to support slowing but solid economic growth.



# S&P 500 – INDEX CONCENTRATION

History shows that valuations of the top 10 stocks have not always been greater than the rest of the index, but more recently they have been increasing given more excitement about themes like AI. The right two charts shows that despite the earnings contribution of the top 10 stocks not increasing, their weight in the index has been increasing significantly recently. Most of their price growth has been driven by multiple expansion rather than earnings.

**P/E ratio of the top 10 and remaining stocks in the S&P 500**  
Next 12 months, 1996 - present



**Weight of the top 10 stocks in the S&P 500**  
% of market capitalization of the S&P 500



**Earnings contribution of the top 10 in the S&P 500**  
Based on last 12 months' earnings

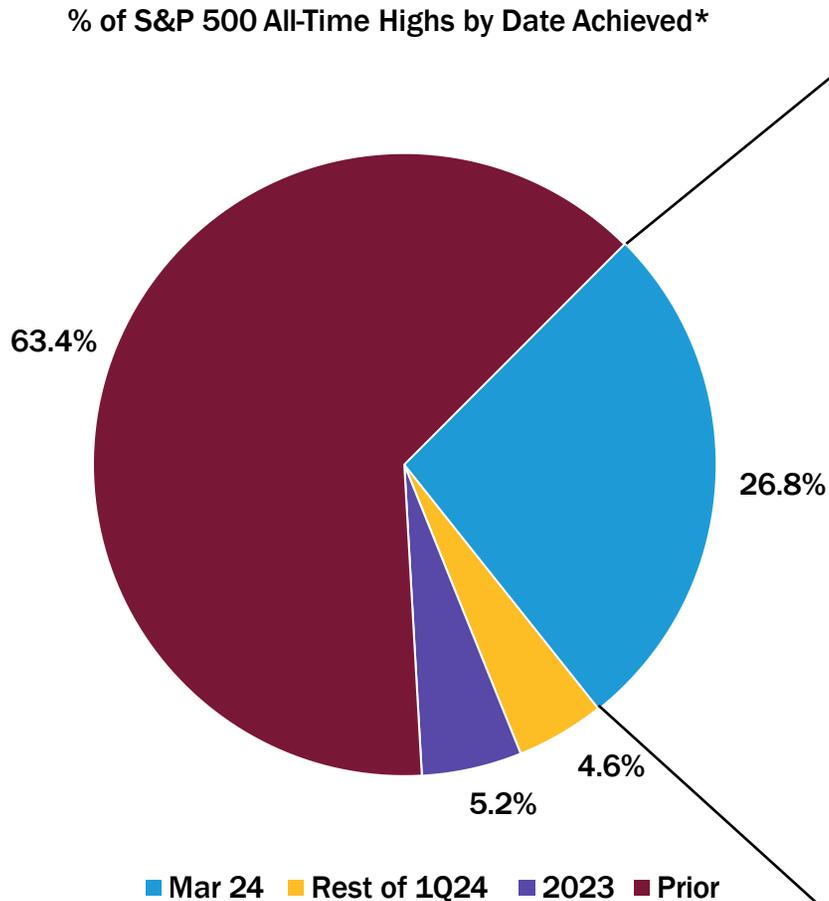


Source: FactSet, Standard & Poor's, J.P. Morgan Asset Management.

The top 10 S&P 500 companies are based on the 10 largest index constituents at the beginning of each month. As of 5/31/2024, the top 10 companies in the index were MSFT (7.0%), AAPL (6.3%), NVDA (6.1%), AMZN (3.6%), META (2.3%), GOOGL (2.3%), GOOG (1.9%), BRK.B (1.7%), LLY (1.5%), JPM (1.3%), and AVGO (1.3%). The remaining stocks represent the rest of the 492 companies in the S&P 500..

# MARKET RALLY BROADENING

During the first quarter, we did see early signs of broadening market participation with all sectors except Real Estate showing positive returns. However, momentum remained the dominant market factor, fueled by heavy interest in the A.I., with a continuation of strong gains in a handful of mega-cap technology stocks. While not as stark as what we witnessed last year, the top four performers within the so-called “Magnificent Seven” – NVIDIA, Meta Platforms, Amazon and Microsoft – accounted for roughly half of the S&P 500’s gain for the quarter.

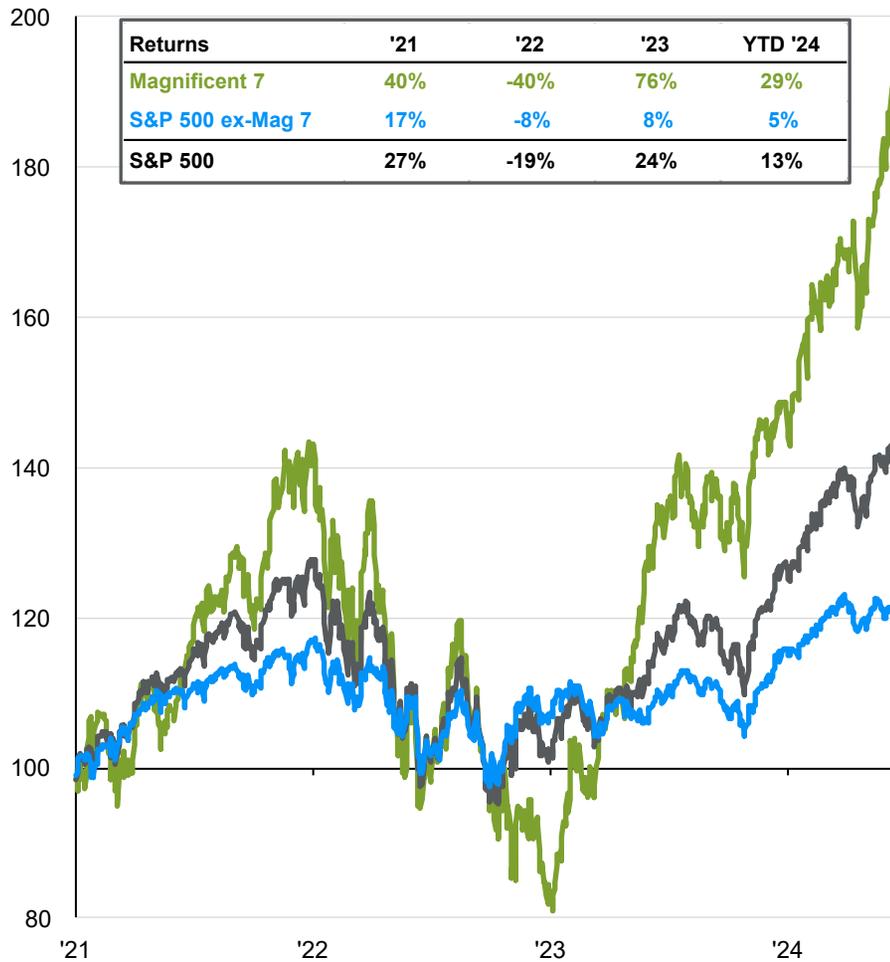


March 2024 All-Time Highs		
Abbvie Inc	Fortive Corp	Nxp Semiconductors Nv
Advanced Micro Devices	Gartner Inc	O'Reilly Automotive Inc
Aflac Inc	Ge Healthcare Technology	Old Dominion Freight Line
Allstate Corp	General Dynamics Corp	Oneok Inc
American Express Co	Hca Healthcare Inc	Oracle Corp
Ameriprise Financial Inc	Hewlett Packard Enterprise	Otis Worldwide Corp
Ametek Inc	Hilton Worldwide Holdings In	Paccar Inc
Amphenol Corp-CI A	Howmet Aerospace Inc	Packaging Corp Of America
Applied Materials Inc	Hubbell Inc	Parker Hannifin Corp
Arch Capital Group Ltd	Huntington Ingalls Industrie	Pentair Plc
Arista Networks Inc	Idexx Laboratories Inc	Phillips 66
Arthur J Gallagher & Co	Illinois Tool Works	Progressive Corp
Autozone Inc	Ingersoll-Rand Inc	Ptc Inc
Axon Enterprise Inc	Intercontinental Exchange In	Pultegroup Inc
Boston Scientific Corp	Intuitive Surgical Inc	Quanta Services Inc
Broadcom Inc	Iron Mountain Inc	Raymond James Financial Inc
Brown & Brown Inc	Jabil Inc	Rollins Inc
Builders Firstsource Inc	Jacobs Solutions Inc	Roper Technologies Inc
Cadence Design Sys Inc	Jpmorgan Chase & Co	Royal Caribbean Cruises Ltd
Cardinal Health Inc	Kla Corp	Salesforce Inc
Carrier Global Corp	Lam Research Corp	Smith (A.O.) Corp
Caterpillar Inc	Leidos Holdings Inc	Snap-On Inc
Cdw Corp/De	Lennar Corp-A	Steel Dynamics Inc
Cencora Inc	Linde Plc	Stryker Corp
Chipotle Mexican Grill Inc	Loews Corp	Super Micro Computer Inc
Chubb Ltd	Marathon Petroleum Corp	T-Mobile Us Inc
Church & Dwight Co Inc	Marriott International -CI A	Textron Inc
Cintas Corp	Marsh & Mclennan Cos	The Cigna Group
Colgate-Palmolive Co	Martin Marietta Materials	Tractor Supply Company
Constellation Energy	Masco Corp	Trane Technologies Plc
Copart Inc	Mastercard Inc - A	Transdigm Group Inc
Costco Wholesale Corp	Mckesson Corp	Travelers Cos Inc/The
Cummins Inc	Merck & Co. Inc.	Uber Technologies Inc
Darden Restaurants Inc	Meta Platforms Inc-Class A	Ulta Beauty Inc
Davita Inc	Micron Technology Inc	United Rentals Inc
Deckers Outdoor Corp	Microsoft Corp	Universal Health Services-B
Diamondback Energy Inc	Molina Healthcare Inc	Valero Energy Corp
Dr Horton Inc	Monolithic Power Systems Inc	Veralto Corp
Eaton Corp Plc	Monster Beverage Corp	Visa Inc-Class A Shares
Eli Lilly & Co	Motorola Solutions Inc	Vulcan Materials Co
Emerson Electric Co	Nordson Corp	Wabtec Corp
Equinix Inc	Nrg Energy Inc	Walmart Inc
Fair Isaac Corp	Nucor Corp	Waste Management Inc
Fastenal Co	Nvidia Corp	Wr Berkley Corp
Fiserv Inc	Nvr Inc	Ww Grainger Inc

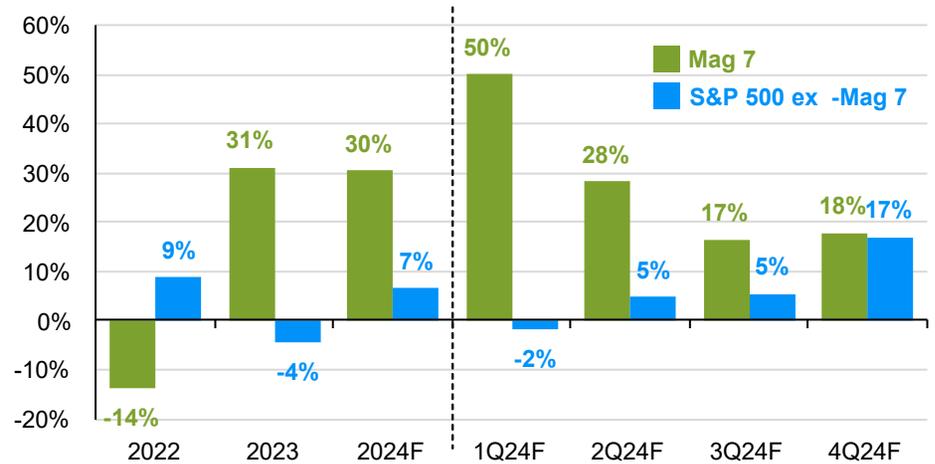
# MAGNIFICENT 7 – EARNINGS DYNAMIC

While the Mag 7 stocks have dominated in market performance since 2023, these 7 stocks severely underperformed in 2022, highlighting their greater volatility. After contracting in 2022, Mag 7 EPS grew strongly in 2023 relative to the rest of the index, where earnings in aggregate contracted. Finally, while overall the performance of the Mag 7 in aggregate has been stellar this year, there has been significant dispersion in returns as Tesla has underperformed in 2024 and NVIDIA has continued its strong performance.

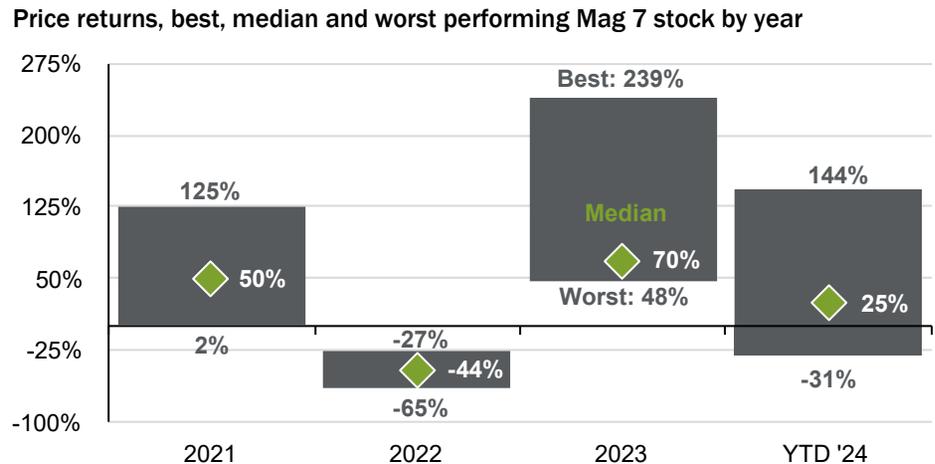
**Performance of “Magnificent 7” stocks in S&P 500\***  
Indexed to 100 on 1/1/2021, price return



**Earnings growth**  
Pro-forma EPS, y/y



**Magnificent 7 performance dispersion**



Source: FactSet, Standard & Poor's, J.P. Morgan Asset Management.

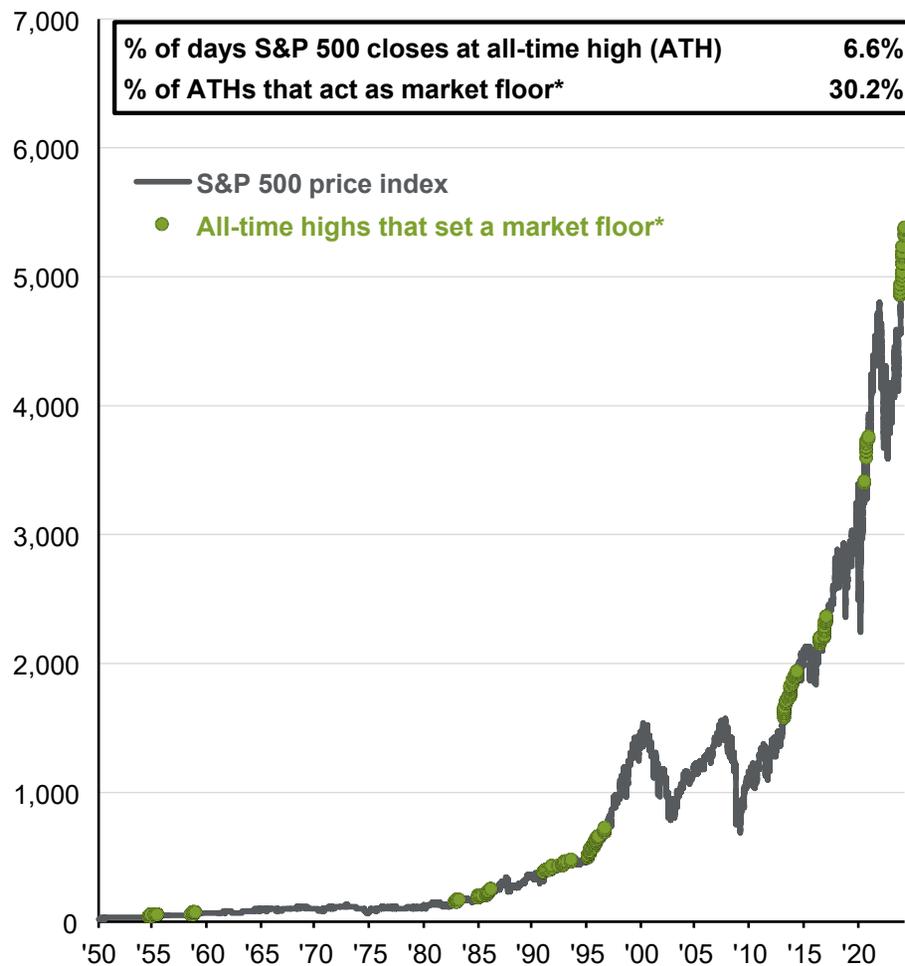
\*Magnificent 7 includes AAPL, AMZN, GOOG, GOOGL, META, MSFT, NVDA and TSLA. Earnings estimates for 2024 are forecasts based on consensus analyst expectations.

# INVESTING AT ALL-TIME HIGHS

Investors usually use all-time highs as a reason to stay in cash or on the sidelines. However, history suggests that investing at all-time highs is not a bad strategy because new highs are typically clustered together. Since 1950, there would have been many instances in which an investor sitting on the sidelines with markets near all-time highs would have never seen a better entry point.

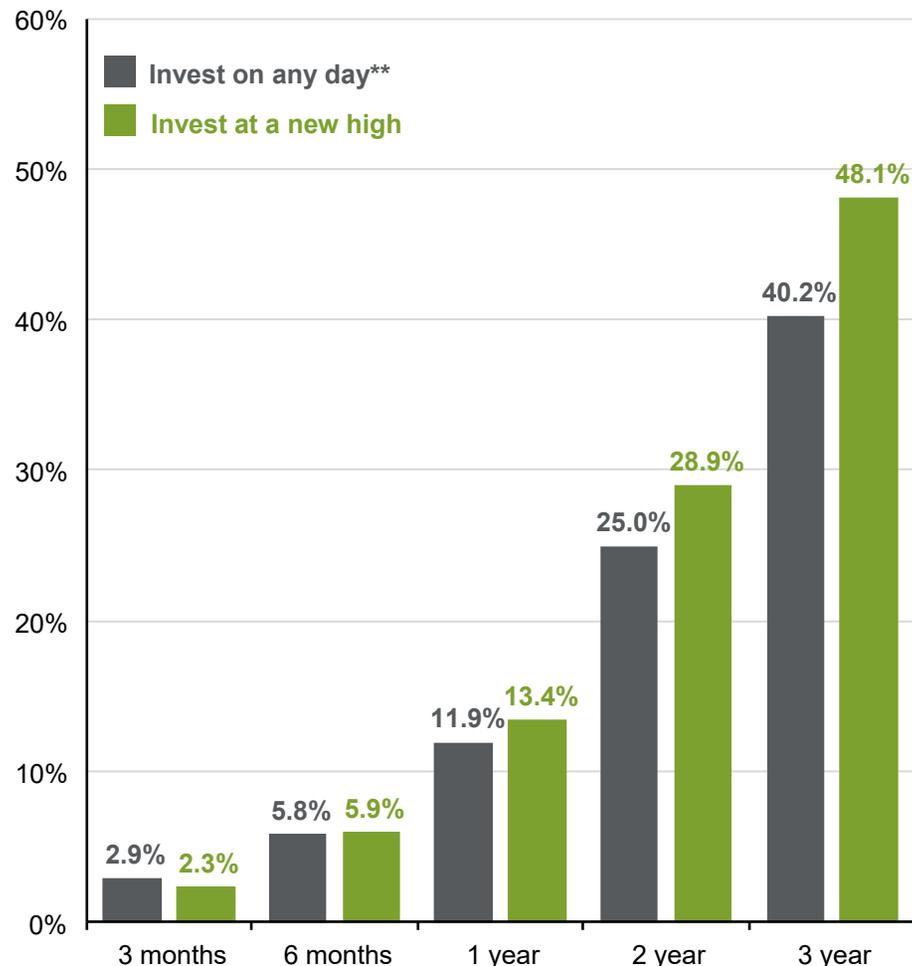
## All-time highs and market floors

S&P 500 price index, daily, 1950 - today



## Average cumulative S&P 500 total returns

Jan. 1, 1988 - Dec. 31, 2023



Source: FactSet, Standard & Poor's, J.P. Morgan Asset Management.

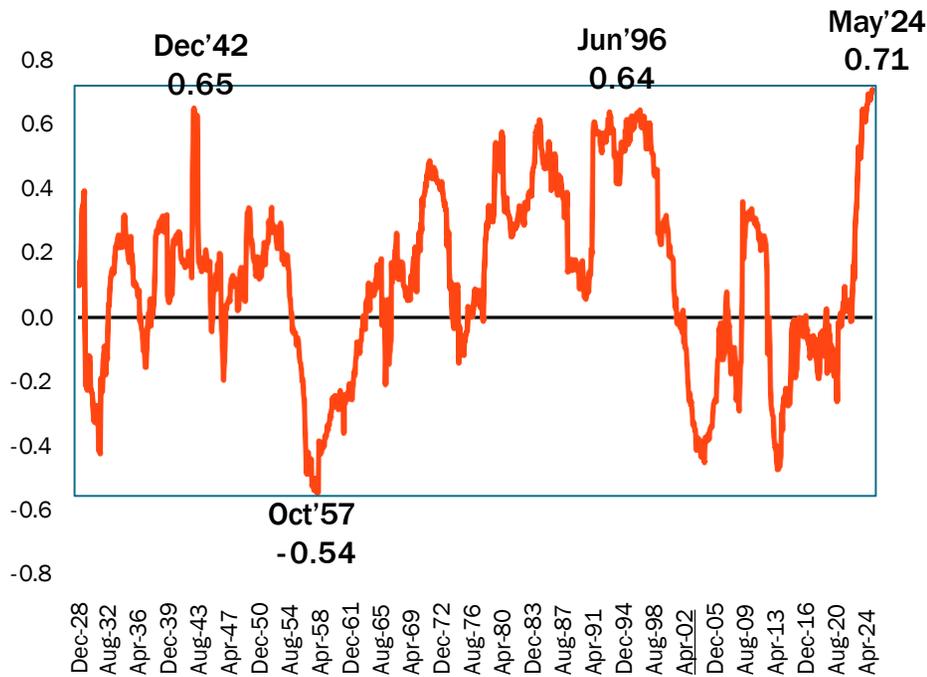
Market floor is defined as an all-time high from which the market never fell more than 5%. (Right) \*\*"Invest on any day" represents average of forward returns for the entire time period whereas "Invest at a new high" represents average of rolling forward returns calculated from each new S&P 500 high for the subsequent 3-months, 6-months, 1-year, 2-year and 3-year intervals, with data starting 1/1/1988 through 12/31/2023.

# STOCK AND BOND CORRELATION

At the beginning of 2022, both the U.S. stock and bond markets were highly sensitive to interest rates. At this time the Federal funds rate sat just above 0%, giving investors no “coupon cushion” in the event that rates started to increase. When the Federal Reserve began its rate hiking cycle last March, both asset classes sold off significantly, resulting in positive stock/bond correlation. However, looking forward, it seems reasonable to assume that the historical inverse relationship will “normalize” in the coming months.

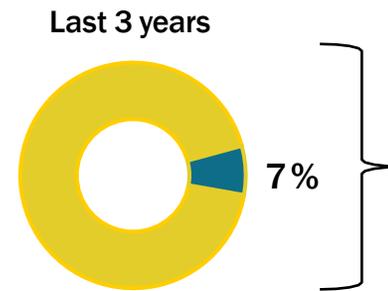
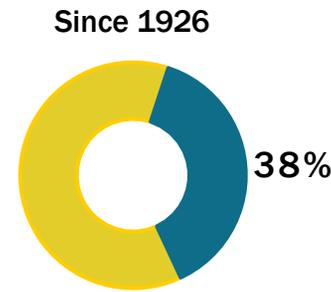
## Highest correlation between stocks and bonds in history

3-year rolling correlation, 1/1/26 - 5/31/24



## With higher correlations, bonds have provided less effective ballast

Percentage of months when bonds were positive when stocks were negative, 1/1/26 - 5/31/24



	Bonds	Stocks
Sep-22	-4.32	-9.21
Apr-22	-3.79	-8.72
Jun-22	-1.57	-8.25
Dec-22	-0.45	-5.76
Jan-22	-2.15	-5.17
Sep-23	-2.54	-4.77
Sep-21	-0.87	-4.65
Apr-24	-2.53	-4.08
Aug-22	-2.83	-4.08
Feb-22	-1.12	-2.99
Feb-23	-2.59	-2.44
Oct-23	-1.58	-2.10
Aug-23	-0.64	-1.59
Nov-21	0.30	-0.69

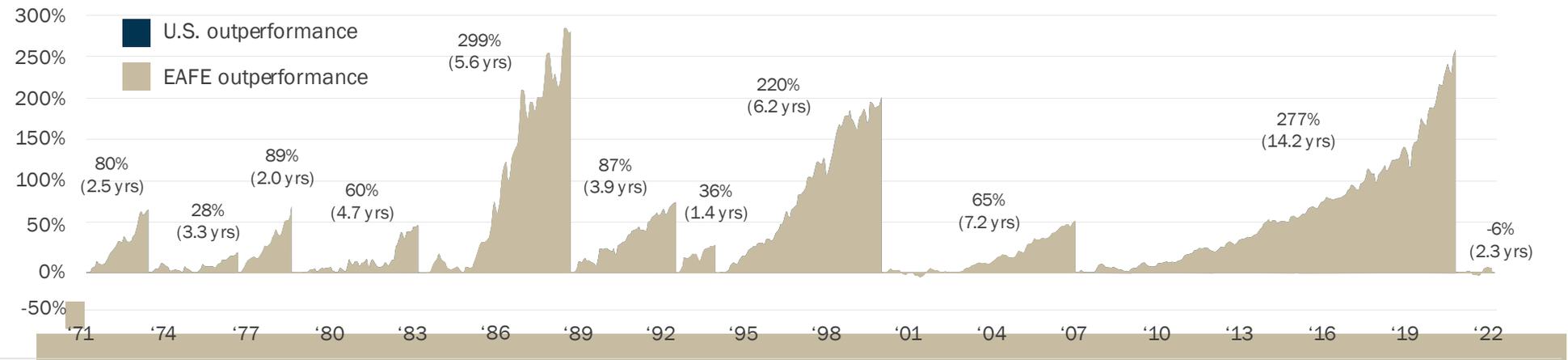
Source: Morningstar as of 5/31/24. U.S. stocks are represented by the S&P 500 TR Index from 3/4/57 to 5/31/24 and the IA SBBI U.S. Lrg Stock TR USD Index from 1/1/26 to 3/4/57. U.S. bonds are represented by the IA SBBI US Gov IT Index from 1/1/26 to 1/3/89 and the Bloomberg U.S. Agg Bond TR Index from 1/3/89 to 5/31/24. Past performance does not guarantee or indicate future results. Index performance is for illustrative purposes only. You cannot invest directly in the index

# DOMESTIC VS INTERNATIONAL STOCKS

Global diversification remains a cornerstone of sound portfolio construction. Over the long run, international equities have boosted returns while also reducing portfolio risk, thanks to foreign stocks' lower correlation with US stocks. However, recent market dynamics have favored US equities, leaving international counterparts trailing. Whether this pattern will persist remains uncertain—we've recently seen some very slight outperformance from foreign stocks. What is evident, though, are the significant changes to global equities over the past several decades. In the late 1980s, US stocks represented just over 30% of global market capitalization and Japan dominated with over 40%. Today, the US dominates with over 60% of world capitalization, with Japan representing just 6%.

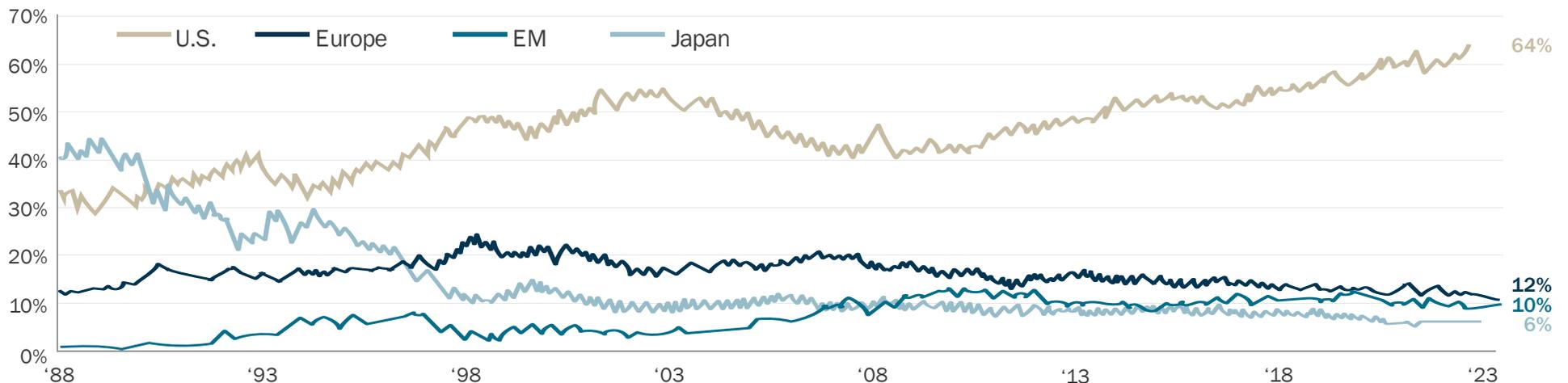
## MSCI EAFE and MSCI USA relative performance

U.S. dollar, total return, cumulative outperformance



## Share of global market capitalization

% weight in the MSCI All Country World Index, USD, monthly



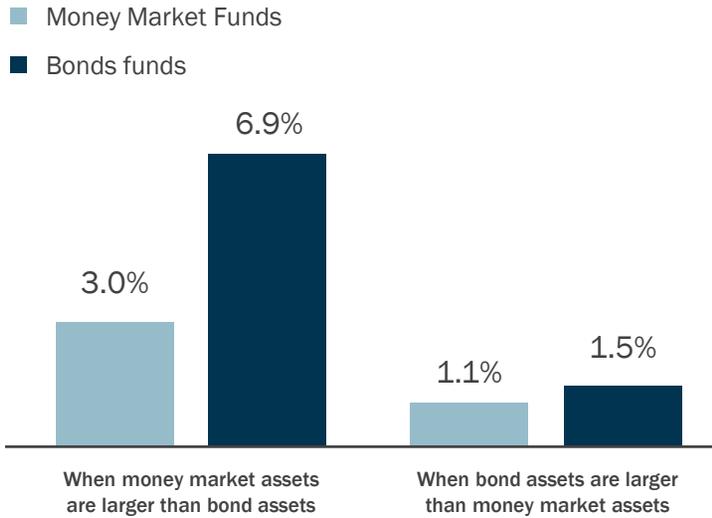
\*Source: JPMorgan Guide to the Markets, April 2024. Regimes change determined when cumulative outperformance peaks and is not reached again in the subsequent 12-month period.

# FIXED INCOME

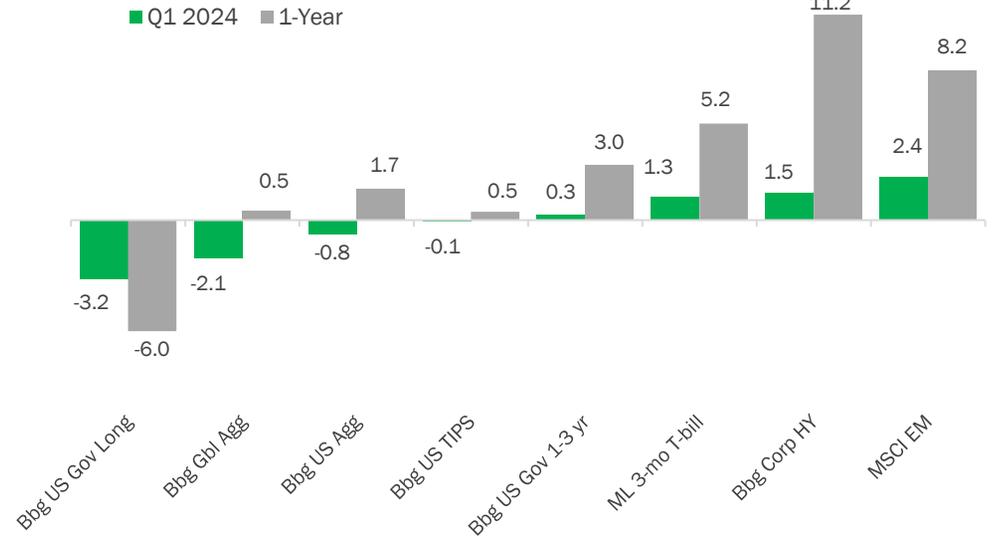
Expectations for Fed rate cuts waned during the quarter as both core CPI and PCE readings remained elevated. Treasury yields rose during the 1<sup>st</sup> quarter as expectations for rate cuts receded. By February, following ongoing growth, total money market funds assets equaled total bond fund assets. In the past, when money market assets have equaled or exceeded bond fund assets, subsequent rate cuts have led to materially higher returns from bonds than from money markets.

## Performance following periods when money market or bond fund asset are greater

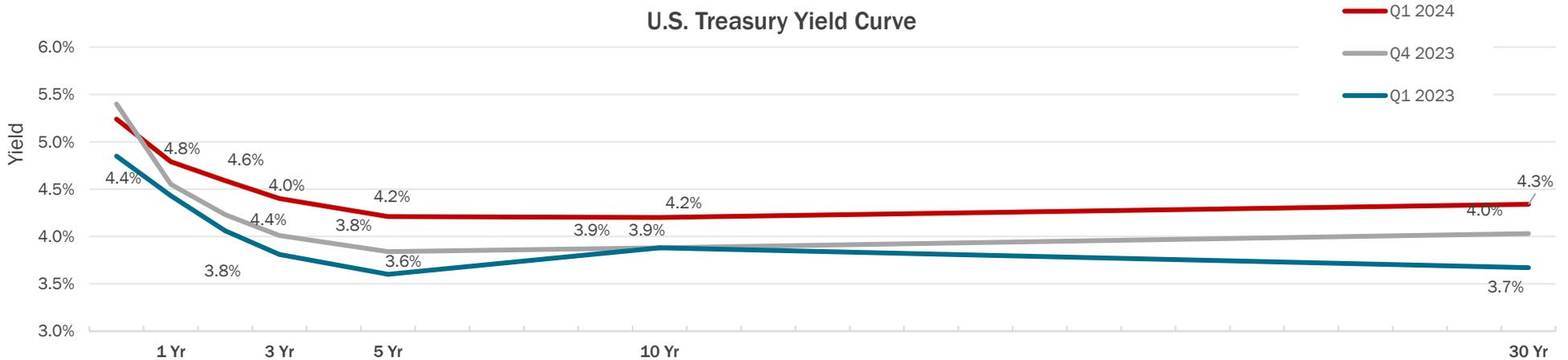
Following 12-month performance for each scenario (1/1/93 – 2/29/24)  
Source: BlackRock – Student of the Market (April 24)



## Fixed Income Market Returns



## U.S. Treasury Yield Curve



## FIXED INCOME – BEAR MARKET

The Bloomberg Aggregate Bond Index is currently experiencing its largest drawdown since its inception in 1976 in terms of both magnitude and length of time. At its nadir, the Barclays Aggregate was down more than 18%. That said, with market and Fed expectations now largely in-line, the worst of bond market volatility is likely behind us, and current yields appear increasingly attractive. With higher yields now offering an attractive “yield cushion,” fixed income offers strong asymmetric returns. Taking the U.S. Aggregate as an example; if yields were to fall by 1%, an investor could expect a return upwards of 11%. However, if rates were to rise by 1%, the coupons from the bonds would help offset some of the price depreciation, and that same investor could expect a loss of only 1.5%.

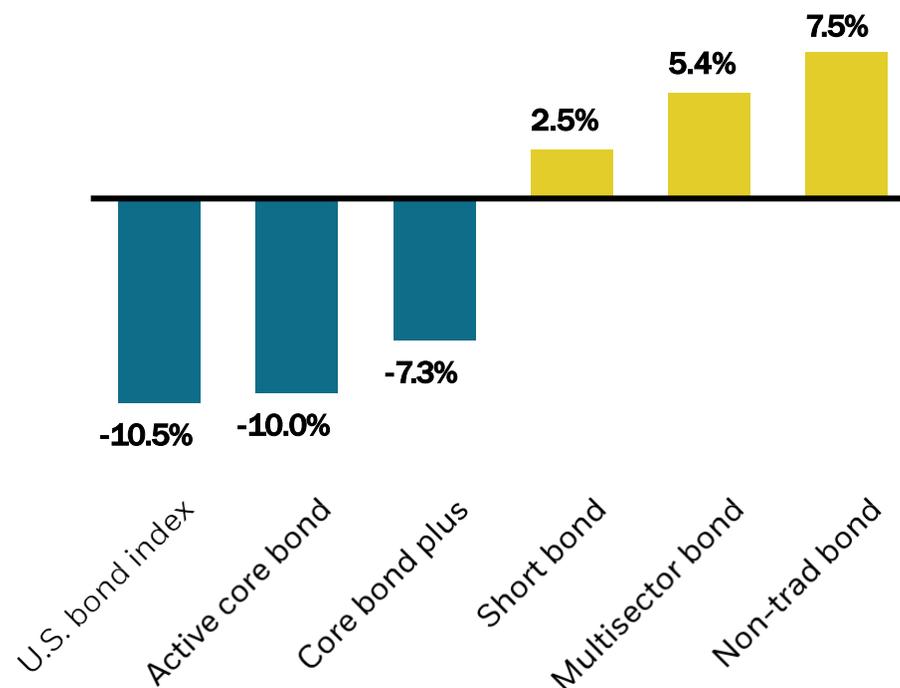
### Largest drawdowns for the core bond index

1/1/26 - 3/31/24

Start (peak)	End of bear	# of months	Max drawdown
July 2020	?	44	-17.2% <i>(currently -10.5%)</i>
May 1958	March 1960	21	-5.2%
June 1980	November 1981	16	-9.0%
August 1954	January 1956	16	-2.0%

### Performance during current bond bear market

8/1/20 - 3/31/24



# US STOCK SECTORS BY PRESIDENT

Technology has remained in the top 2 sectors for 4 of the past 5 presidencies. Despite very different presidential political agendas the top three performing sectors were the same in both the Obama and Trump presidential terms (though in a different order). Additionally, Energy was the worst performing sector

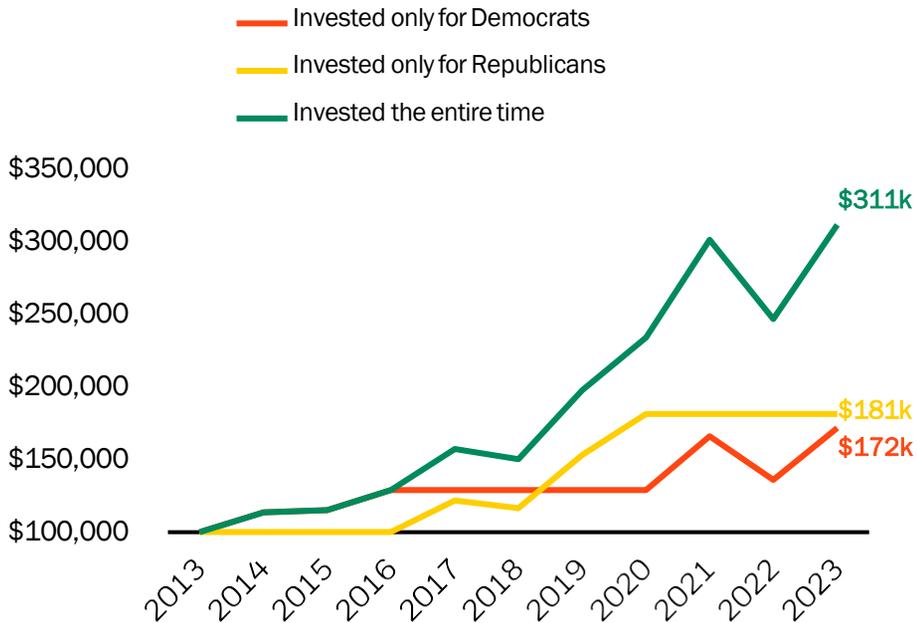
Clinton	Bush	Obama	Trump	Biden
Info. Technology 30.3%	Energy 9.9%	Consumer Disc. 18.6%	Info. Technology 26.8%	Energy 47.2%
Financials 22.4%	Materials 6.6%	Info. Technology 16.4%	Consumer Disc. 18.6%	Info. Technology 21.9%
Health Care 21.8%	Cons. Staples 4.2%	Health Care 14.2%	Health Care 12.7%	Financials 19.2%
Industrials 18.5%	Utilities -0.1%	Cons. Staples 12.8%	Utilities 9.9%	Industrials 16.2%
Energy 16.0%	Industrials -1.0%	Industrials 12.7%	Materials 9.9%	Materials 12.7%
Comm. Services 15.1%	Health Care -2.2%	Real Estate 12.7%	Comm. Services 9.1%	Health Care 12.5%
Consumer Disc. 14.0%	Consumer Disc. -2.3%	Utilities 10.9%	Industrials 8.5%	Comm. Services 11.9%
Utilities 13.4%	Financials -4.4%	Materials 10.1%	Cons. Staples 7.4%	Cons. Staples 9.2%
Cons. Staples 13.0%	Comm. Services -5.1%	Comm. Services 9.5%	Financials 6.8%	Consumer Disc. 7.4%
Materials 6.6%	Info. Technology -8.7%	Financials 7.2%	Real Estate 6.5%	Real Estate 6.9%
		Energy 5.0%	Energy -16.4%	Utilities 3.8%

Source: Morningstar as of 3/31/24. Technology represented by the S&P 500 information technology sector index, Health care represented by the S&P 500 health care sector index, Financials represented by the S&P 500 financial sector index, Industrials represented by the S&P 500 industrial sector index, Materials represented by the S&P 500 materials sector index, Consumer discretionary represented by the S&P 500 consumer discretionary sector index, Communication services represented by the S&P 500 communication services sector index, Real estate represented by the S&P 500 real estate sector index and Consumer staples represented by the S&P 500 consumer staples sector index. Past performance does not guarantee or indicate future results. Index performance is for illustrative purposes only. You cannot invest directly in the index. Clinton period is from 11/4/1992 to 12/13/2000, Bush time period from 12/14/2004 to 11/4/2008, Obama time period from 11/5/2008 to 11/8/2016 and Trump time period from 11/9/2016 to 11/3/2020. Biden period is from 11/4/2020 to 3/31/24

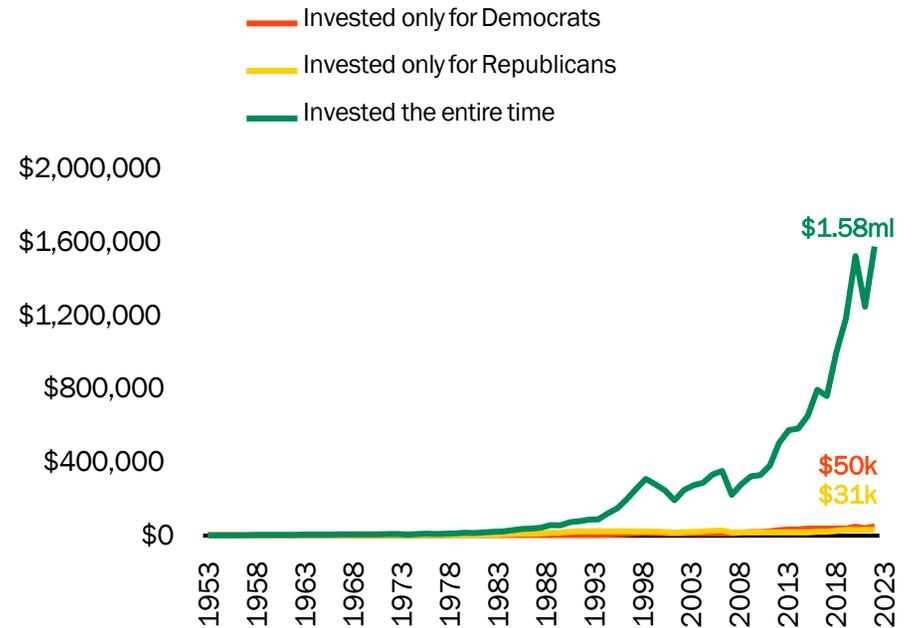
# EQUITIES – ELECTION YEARS

The first half of presidential election years tend to be sluggish, followed by a big second half. It's time in the market that matters... not the president's political party. Additionally, election years have benefited U.S. stocks. Election years historically have seen negative returns for U.S. stocks at nearly half the rate as non-election years.

Last 10 years, \$100,000 invested 12/31/2013, depending on which party held the presidency



Last 70 years, \$1,000 invested 12/31/1953, depending on which party held the presidency



Source: Morningstar as of 12/31/23. Stock market represented by the S&P 500 Index from 1/1/70 to 12/31/23 and IA SBBI U.S. large cap stocks index from 1/1/54 to 1/1/70. Past performance does not guarantee or indicate future results. Index performance is for illustrative purposes only. You cannot invest directly in the index.



SEE WHERE YOU'RE GOING

# DISCUSSION OF NEW OVERTIME RULE AND ITS IMPLICATIONS

Presented by: Stephanie P. Karn

**WILLIAMS MULLEN**

# PRESENTER



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## FLSA BACKGROUND



The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

- > Covered, nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour, as well as overtime pay for all hours worked over 40 in a single workweek.
  - Of course, in Virginia, the minimum wage currently is \$12.00\* per hour.
- > Unless an employee is exempt under one of a limited number of exemptions, they are entitled to at least the minimum wage rate for all hours worked, and overtime for all hours worked over 40 in a single workweek.
- > “Hours worked” ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace. It may also include “on-call” shifts if the employee is “engaged to wait” such that they cannot pursue personal activities.
- > An employee's “workweek” is a fixed and regularly recurring period of 168 hours (seven consecutive 24-hour periods). The workweek may coincide with the calendar week, or alternatively may begin on any day and at any hour of the day.

## OVERTIME PAY



- > All non-exempt employees are entitled to overtime pay for all hours worked over 40 in a workweek at a rate not less than time and one-half their **regular rate of pay**.
  - The amount of overtime pay due to an employee is based on the employee's regular rate of pay and the number of hours worked in a workweek. Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions) in any workweek by the total number of hours actually worked to determine the regular rate
  - The regular rate of pay includes all compensation for employment except certain excluded payments such as reimbursement for expenses incurred on the employer's behalf, premium payments for overtime work or premiums paid for work on weekends and holidays, discretionary bonuses, gifts, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.
- > There is no limit on the number of hours employees (16 and older) may work in any workweek.
- > The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime is worked on such days.



## Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, effective July 1, 2024 (AND January 1, 2025!).

- > As of **July 1, 2024**, the U.S. Department of Labor (DOL) will raise the standard salary level from the current amount of \$684 per week to **\$844 per week (equivalent to \$43,888 per year)**. And, for Highly Compensated Employees, the annual compensation level to be exempt from overtime pay will increase from \$107,432 to **\$132,964**.
  
- > On *January 1, 2025*, the DOL will raise the standard salary level to *\$1,128 per week (equivalent to \$58,656 per year)*.
  - The DOL, using the methodology established in 2019 and looking at current data, set the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South).
  - And, for highly compensated employees, the compensation level will be set at the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally, resulting in a new compensation level of *\$151,164*.

Future updates to the salary and compensation levels will occur every three (3) years and will apply up-to-date wage data to the salary and compensation methodologies in the regulations at the time of the update. The next three-year update will take place on July 1, 2027. [At least 150 days before the date of a scheduled update, the DOL will publish in the Federal Register a notice with the new earnings levels.]

Does this mean salaried employees earning below the new salary level MUST be converted to hourly pay?

- NO. Employers have several options for addressing the new threshold with affected employees, An employer may:
  - increase the salary of the employee to at least the new salary level to retain their exempt status;
  - pay an overtime premium of one and a half times the employee's regular rate of pay for any overtime hours worked;
  - reduce or eliminate overtime hours;
  - reduce the amount of pay allocated to the employee's base salary (provided that the employee still earns at least the applicable hourly minimum wage) to offset new overtime pay; or
  - use some combination of these responses.
- And Salaried workers earning below the new salary threshold may continue to be paid a salary (and not automatically convert to hourly), so long as that salary is equivalent to a base wage at least equal to the minimum wage rate for every hour worked, and the employee receives a premium on that employee's regular rate for any overtime hours each week.

# IMPACT FOR EMPLOYERS

## EMPLOYEE “STATUS” IS A-CHANGIN’

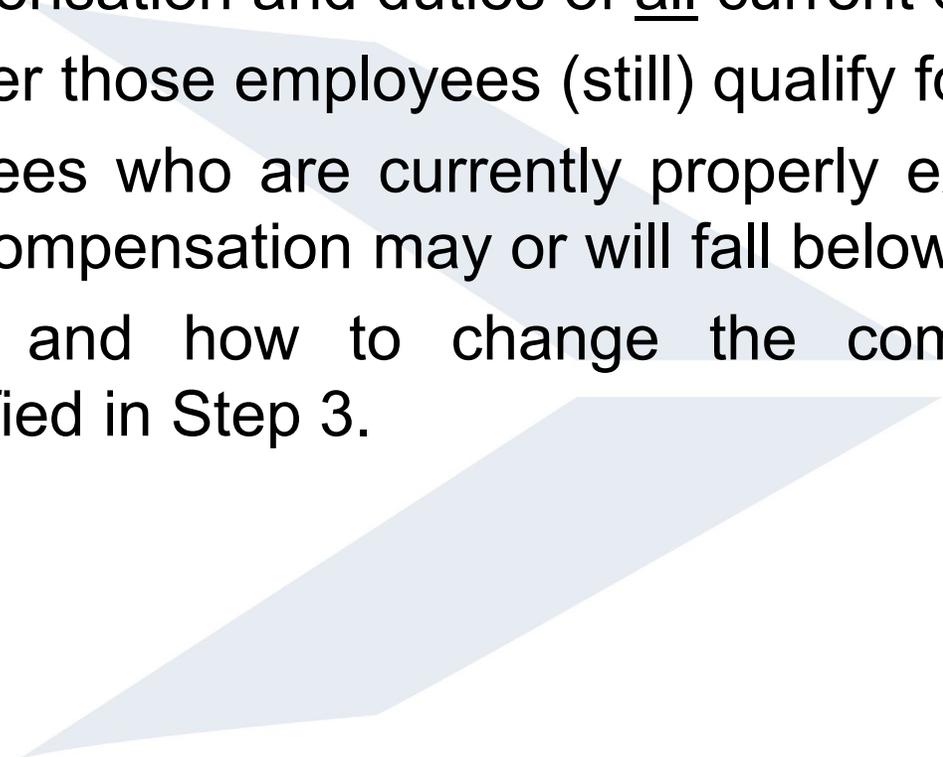


- > Now that the minimum salary threshold is increased, employees who are paid less than this minimum salary annually will **no longer qualify** for the exemption and will be entitled to overtime under the FLSA.
- > Therefore, positions that are currently (and properly) classified as exempt but which are paid less than the new minimum salary will no longer be properly exempt as of July 1st.
  - Keep in mind: Employers still may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary test requirement, provided that such payments are paid on an annual basis or more frequently. Employees whose nondiscretionary bonuses bring their **total annual compensation** to at least the new minimum may be properly exempt.

## IMMEDIATE NEXT STEPS FOR EMPLOYERS



What should you be doing?

1. Review the compensation and duties of all current exempt employees.
  2. Determine whether those employees (still) qualify for exemption
  3. Of those employees who are currently properly exempt, identify all whose current salaries/compensation may or will fall below the new thresholds.
  4. Decide whether and how to change the compensation structure for employees identified in Step 3.
- 

- 1. Review the compensation and duties of all current exempt employees**
  - Now is the perfect time to bring all employees into compliance.
  - While lower-paid employees are often more likely to be misclassified, it is important to review all employees for compliance.
- 2. Identify any exempt employees who may not qualify for exemption**
  - Look out for common “traps”— administrative employees and lower-level managers.
  - Employees who do not currently qualify for the exemption based on their employment duties will not qualify under the new rule either.

# APPLICABLE FLSA EXEMPTIONS

## OVERTIME EXEMPTIONS GENERALLY



Remember, an employee is entitled to minimum wage and overtime unless one of the enumerated exemptions under the FLSA applies.

Each exemption under the FLSA generally requires that the employee (1) meet certain tests regarding their job duties (the “**duties test**”) and (2) be paid on a **salary basis** of at least the minimum salary rate.

- *Certain exemptions discussed below do not have a salary basis requirement.*

Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees.

- These exemptions are often referred to as the “*white collar*” exemptions.

- > To qualify for exemption, employees generally must meet certain tests regarding their job duties, called the “**duties test**”
- > **Job titles and job descriptions alone do not determine exempt status. In order for an exemption to apply, an employee’s specific job duties *in practice* must meet all the requirements of the Department of Labor regulations.**

## SALARY BASIS REQUIREMENT



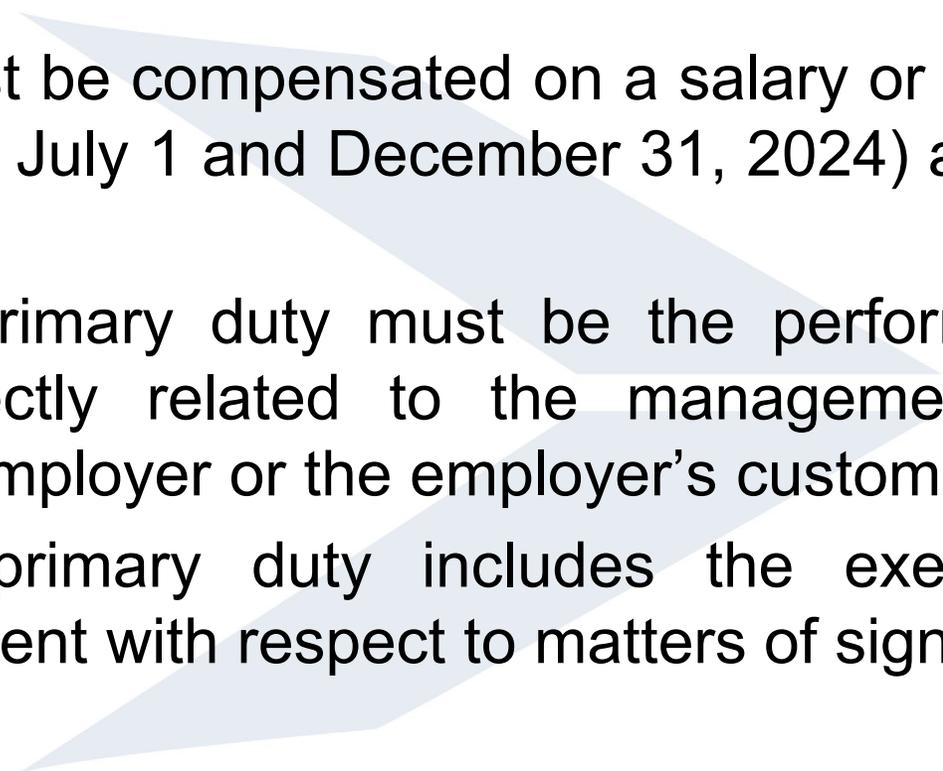
- > In addition to meeting the requirements of the duties test, most of the exemptions also require that the employee be paid on a salary basis of at least the minimum salary rate under the rules
- > The new salary minimum as of **July 1<sup>st</sup>** is \$844/week, or \$43,888/year. And, as of **January 1<sup>st</sup>**, it will be \$1,128/week, or \$58,656/year.

**The fact that an employee is paid on a salary basis does NOT mean that the employee is automatically exempt. A salaried employee is not exempt unless the employee also meets duties test requirements for one of the exemptions.**

## ADMINISTRATIVE EXEMPTION



To qualify for the Administrative Employee Exemption, all of the following tests must be met:

- > The employee must be compensated on a salary or fee basis of at least \$844 per week (between July 1 and December 31, 2024) and \$1,128/week (starting January 1, 2025);
  - > The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; AND
  - > The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
- 

## ADMINISTRATIVE EXEMPTION



“The employee’s primary duty must be the performance of office or non-manual work *directly related to the management or general business operations* of the employer or the employer’s customers”

- > “**Primary duty**” means the principal, main, major or most important duty that the employee performs.
- > To meet the “*directly related to management or general business operations*” requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished from working on a manufacturing production line or selling a product
- > Work “directly related to management or general business operations” includes tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

# ADMINISTRATIVE EXEMPTION



“The employee’s primary duty includes **the exercise of discretion and independent judgment** with respect to *matters of significance*.”

- > The **exercise of discretion and independent judgment** involves the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered.
  - Implies the employee has authority to make an independent choice, free from immediate direction or supervision.
  - Must be more than the use of skill in applying well-established techniques, procedures or specific standards in manuals or other sources.
- > *Matters of significance* refers to the level of importance or consequence of the work performed.
  - Think of employees who make important decisions regarding business operations, such as an employee who makes major accounting decisions related to the school’s finances.
  - It is not enough that the employer will experience financial losses if the employee fails to perform the job properly. *E.g.*, a worker who operates expensive machinery does not work on “matters of significance” just because their failure to the job correctly could be costly.

# ADMINISTRATIVE EXEMPTION



Application to Higher Education: Administrative employees in higher education could include admissions counselors or student financial aid officers. \*Job titles alone do not determine whether an employee meets the duties test.\*

There are specific regulatory provisions for certain administrative employees – “academic administrative employees” – whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment. To be exempt as an academic administrative professional:

1. The employee must satisfy the salary basis and salary level tests or receive a salary of at least the entrance salary for teachers in the same educational establishment; and
2. The employee's primary duty must be to perform administrative functions directly related to academic instruction or training in an educational establishment.

Employees who work in higher education but whose work does not relate to the educational field (such as work in general business operations) do not qualify as exempt academic administrative employees. **Exempt academic administrative personnel** generally include department heads; intervention specialists who are available to respond to student academic issues, and other employees with similar responsibilities; and academic counselors who administer school testing programs, assist students with academic problems, and advise students concerning degree requirements.

### > Beware the “administrative” trap!

- Many positions that are commonly referred to as “administrative,” such as administrative assistants, receptionists, file clerks, or other clerical employees, do NOT typically meet the duties test for the administrative exemption.
- These types of positions typically are not related to “management or general business operations” as defined in the regulations and do not involve sufficient independent judgment and discretion.
- A small number of executive assistants *may* qualify for the administrative exemption if they primarily exercise discretion as to matters related to the executive’s duties (acting as the executive’s “right-hand person”) and typically must also be paid much more than other administrative assistants.

## EXECUTIVE EXEMPTION



To qualify for the Executive Employee Exemption, all the following tests must be met:

- > The employee must be compensated on a salary basis of at least \$844 per week (between July 1 and December 31, 2024) and \$1,128/week (starting January 1, 2025);
- > The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- > The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent (*i.e.* four part-time employees); AND
- > The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Application to Higher Education: Various positions may qualify for the executive exemption, including presidents, deans, department heads, directors, and any other manager or supervisor whose job duties and compensation satisfy the above criteria.

## EXECUTIVE EXEMPTION



“The employee’s primary duty must be **managing** the enterprise, or managing a *customarily recognized department or subdivision* of the enterprise”

- > **Management** includes activities such as interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; assessing production or sales efficiency to recommend promotions/demotions; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning work among the employees; planning and controlling the budget; and monitoring or implementing legal compliance measures.
- > A *customarily recognized department or subdivision* is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function.

“The employee must **customarily and regularly direct the work** of at least two or more other full-time employees or their equivalent (*i.e.* four half-time employees [or one full-time and two half-time employees]).”

- > **Customarily and regularly** means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.
- > A department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of at least two of those workers.

## EXECUTIVE EXEMPTION



“The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.”

- > Factors indicating “particular weight” include whether it is part of the employee’s job duties to make such recommendations, and the frequency with which such recommendations are made, requested, and relied upon.
  - Requires more than occasional suggestions
  - Generally must relate to those workers under employee’s direction
  - An employee’s recommendations may still be deemed to have “particular weight” even if a higher-level manager’s recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee’s change in status.

### > Beware the “manager” trap!

- Many positions with “manager” in their job titles do not actually qualify for the executive exemption—watch out for “Assistant Manager” and “Associate Manager.”
- These types of positions often do not manage the enterprise or a recognized unit of the enterprise.
- These types of positions often do not have the level of discretion and input required for the executive exemption—
  - no hiring/firing decisions
  - minimal disciplinary decision-making
  - simply enforce the rules or policies implemented by higher-ranking management in their absence

## PROFESSIONAL EXEMPTION



To qualify for the Learned Professional Employee Exemption, all of the following tests must be met:

- > The employee must be compensated on a salary basis of at least \$844 per week (between July 1 and December 31, 2024) and \$1,128/week (starting January 1, 2025);
- > The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- > The advanced knowledge must be in a field of science or learning; AND
- > The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

## PROFESSIONAL EXEMPTION



“The employee’s primary duty must be **the performance of work requiring advanced knowledge**, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment”

- > **Work requiring advanced knowledge** means work that is predominantly intellectual in character, and includes work requiring the consistent exercise of discretion and judgment.
  - distinguished from work involving routine mental, manual, mechanical or physical work.
  - Generally must use the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances.
  - Advanced knowledge cannot be attained at the high school level.

“The advanced knowledge must be in a *field of science or learning*”

- > Fields of science or learning include *law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy* and other occupations that have a recognized professional status
- > Distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type but is not in a field of science or learning.

# PROFESSIONAL EXEMPTION



“The advanced knowledge must be **customarily acquired by a prolonged course of specialized intellectual instruction.**”

- > The learned professional exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession.
- > Usually requires the appropriate academic degree.
  - The exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction.
- > This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

Professional Employees in Higher Education: Examples of exempt non-teacher learned professionals generally include certified public accountants, psychologists, certified athletic trainers, and librarians. Postdoctoral fellows, who conduct research at a higher education institution after completing their doctoral studies, likewise generally meet the duties requirements of the learned professional exemption, and they may additionally qualify for the teacher exemption if teaching is their primary duty.

## PROFESSIONAL EXEMPTION – TEACHERS (NO CHANGES)



**Teachers** (professors, adjuncts, instructors) are exempt under the following circumstances:

- > Their **primary duty** is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Must spend more than 50% of their workweek teaching.
- > Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers.
- > The salary and salary basis requirements do not apply to bona fide teachers.
- > Having a **primary duty** of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge includes, by its very nature, exercising discretion and judgment.
  - > Full or part-time status, and onsite or remote teaching typically do not impact the exemption.
- > Includes faculty members who are hired to teach but who may also spend a significant amount of time with extracurricular activities, e.g., moderators or advisors for drama, speech, or debate.
- > *NOTE: Additional Exemption for Creative Professionals, whose primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The salary and salary basis requirements DO apply here.*

## PROFESSIONAL EXEMPTION - COACHES



**Athletic coaches**, which may include assistant coaches, employed by higher education institutions may qualify for the teacher exemption.

- > “Teaching” may include instructing student-athletes in how to perform their sport.
- > A coach will not qualify for the exemption if their **primary duties** are recruiting students to play sports or visiting high schools and athletic camps to conduct student interviews.
  - The amount of time a coach spends instructing student-athletes in a team sport is relevant, but not the exclusive factor, in determining the coach’s exempt status.

# PROFESSIONAL EXEMPTION – STUDENT EMPLOYEES



As a general matter, most students who work for their college or university are hourly non-exempt workers and do not work more than 40 hours per week. The following, however, are examples of students who often receive a salary or other non-hourly compensation:

- > Graduate Teaching Assistants. Graduate teaching assistants whose primary duty is teaching are exempt. Because they qualify for the teacher exemption, they are not subject to the salary basis and salary level tests.
- > Research Assistants. Generally, an educational relationship exists when a graduate or undergraduate student performs research under a faculty member's supervision while obtaining a degree. Under these circumstances, an employment relationship typically does not exist with either the school or any grantor funding the student's research – even if the student receives a stipend for performing the research.
- > Student Residential Assistants. Students enrolled in bona fide educational programs who are RAs and receive reduced room or board charges or tuition credits generally are not considered employees under the FLSA, and are not entitled to minimum wages and overtime under the FLSA.

An employment relationship generally will exist when a student receives compensation and their duties are not part of an overall education program. E.g., students who work at food service counters, sell programs or usher at events, or wash dishes in dining halls and anticipate some compensation (for example, money or meals) are generally considered employees entitled to minimum wage and overtime.

### Employees engaged in the **Practice of Law or Medicine:**

- > An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is **actually engaged** in such a practice.
- > An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession.
- > The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.

# COMPUTER PROFESSIONAL EXEMPTION



To qualify for the **Computer Employee Exemption**, the following tests must be met:

- > The employee must be compensated on an hourly basis of at least \$27.63 an hour (unchanged);
- > The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- > The employee's primary duty must consist of (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) A combination of these duties, the performance of which requires the same level of skills.

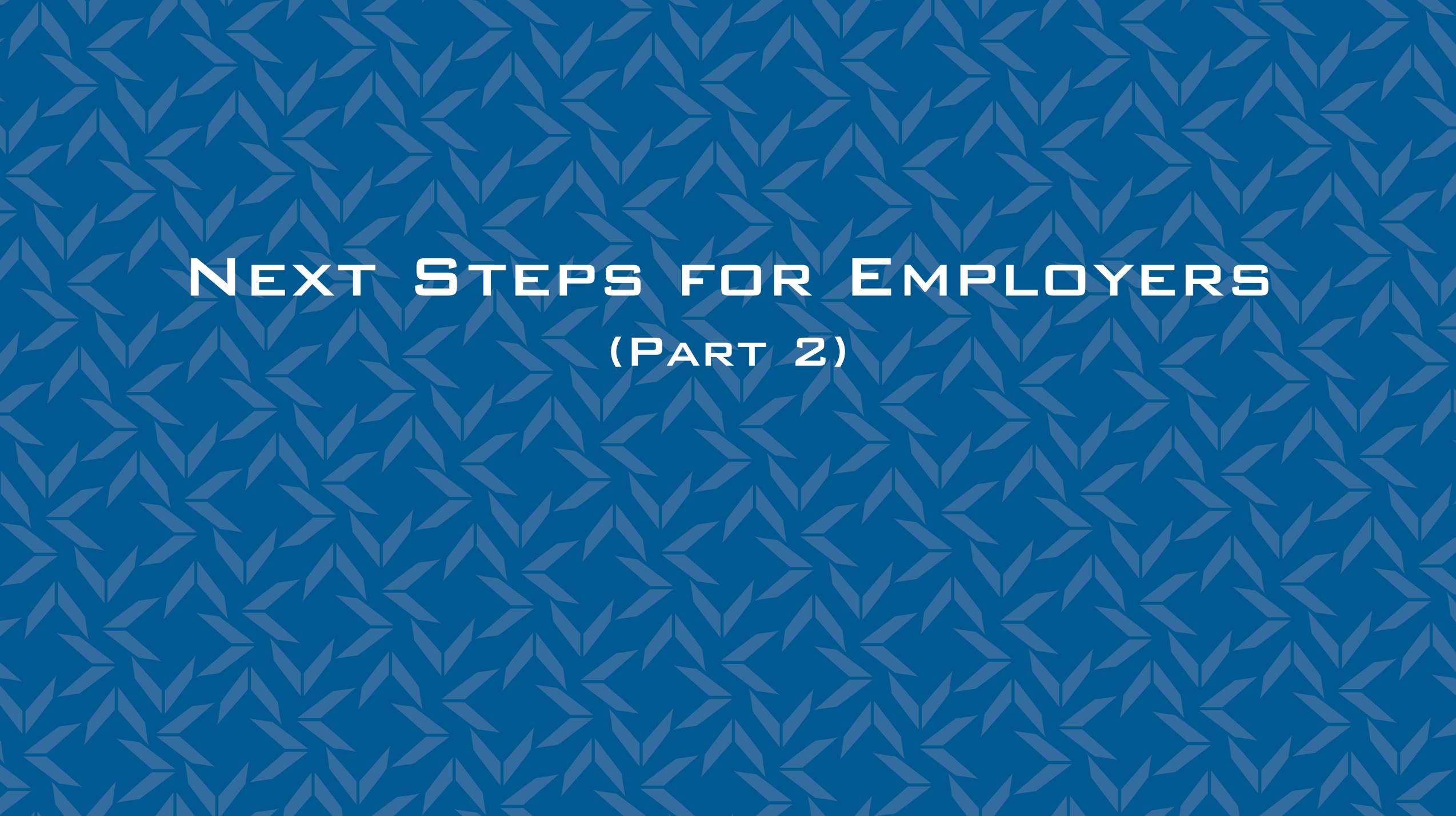
Employees who serve in a typical “help desk” function, or who only work from/with existing hardware or software, do not qualify for this exemption.

## HIGHLY-COMPENSATED EMPLOYEES



Highly-Compensated Employees performing office or non-manual work and paid total annual compensation of **\$132,964** or more (between July 1 and December 31, 2024), and **\$151,164** as of January 1, 2025, are exempt from the FLSA *IF* they *customarily and regularly* perform at least one of the duties of an exempt executive, administrative, or professional employee identified in the standard tests for exemption.

- > *Customarily and regularly* means greater than occasionally but may be less than constant and includes work normally and recurrently performed every workweek but does not include isolated or one-time tasks.

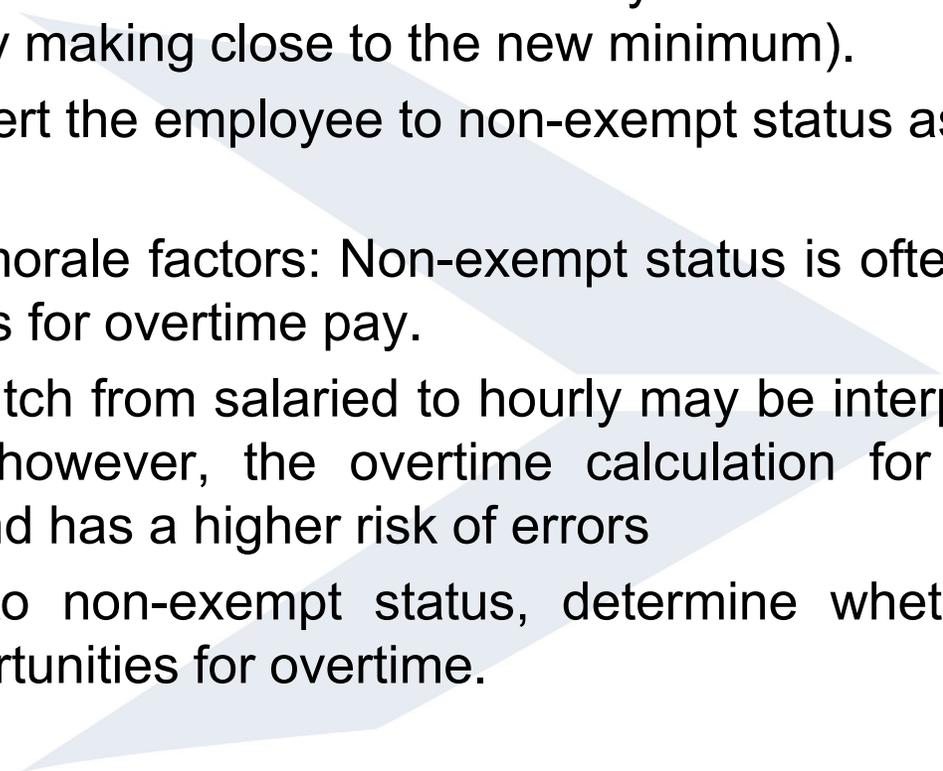


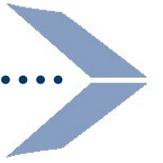
# NEXT STEPS FOR EMPLOYERS

## (PART 2)

### **3. Of those employees who are currently properly exempt, identify those whose current salaries/compensation may or do fall below the new thresholds.**

- The new threshold as of July 1, 2024, is \$43,888, more than \$8,300 higher than the current minimum, so there likely will be numerous employees in this category.
- Because the DOL has enacted automatic increases moving forward, and starting as early as January 1, 2025 (\$58,656), it would be prudent to look at all employees who make \$65,000/year or less.
- Remember that employees relying on the highly-compensated employee exemption will also require an even higher salary minimum to be exempt.

- 4. Decide how to change the compensation structure for employees identified in Step 3**
- One option would be to increase the salary to the new threshold (most practical for employees already making close to the new minimum).
  - Another is to convert the employee to non-exempt status as either a salaried employee or hourly employee.
    - Consider the morale factors: Non-exempt status is often viewed as a demotion, even though it allows for overtime pay.
    - Similarly, a switch from salaried to hourly may be interpreted by employees as a loss of “prestige,” however, the overtime calculation for salaried employees is more complicated and has a higher risk of errors
    - If converting to non-exempt status, determine whether you will reduce or even eliminate opportunities for overtime.
- 



## > Recommended/Required Tasks before July 1, 2024:

- Decide how you will track, record and maintain records of all hours worked for newly-minted non-exempt employees. Is your current system able to handle a larger number of users?
- Review employee handbooks, especially timekeeping, overtime, meal and rest break policies – do they need to be updated or revised?
  - Make sure your Overtime policy provides that overtime must be approved in advance and failure to obtain advance approval may result in discipline (although the employee still will be paid).
- Review available benefits, including applicable plan documents – are there different benefits depending on an employee’s status as exempt or non-exempt?
- Consider whether you need to implement, update and/or re-issue policies regarding: school-issued laptops and phones; remote work; and limits on work outside of business hours.
  - Do you need to offer new or additional training to all affected employees and their managers?
- Determine how and when you will notify affected employees that their status is changing from exempt to non-exempt and provide as much advanced notice as possible **before July 1<sup>st</sup>**.
- Make sure all affected employees and their managers know: **NO OFF-THE-CLOCK WORK!**

**Warning:** Failure to properly classify an employee under the FLSA can make a school liable for unpaid overtime as far back as three (3) years, liquidated damages equal to the amount of the unpaid overtime wages, attorneys' fees and costs.

- The standard Statute of Limitations under the FLSA is two years, with three years if the violation is “willful.”
- An employer may defend against liquidated damages by showing it acted in good faith, with reasonable grounds for believing it acted in compliance with the FLSA.

THANK YOU!



Any questions?



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[www.williamsmullen.com](http://www.williamsmullen.com)



804.420.6013

*Please note: This presentation contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Individuals with particular needs on specific issues should retain the services of competent counsel.*



*Millennium  
Advisory Services, Inc.*

# Your Retirement Plan:

## Resources & Considerations for Recruiting & Retaining Employees



# Agenda

**1** Retirement Statistics

---

**2** Enrollment & Plan Features

---

**3** Questions from Employees

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**4** Health & Wealth

---

**5** Best Practices Discussion

# What are things outside of your control?



# People Are Worried About Finances

**67%**

67% of employees report they are stressed about their financial situation

\*Data from PwC's 8th Annual Employee FinancialWellness Survey (2019 results)

**46%**

46% of people have less than \$1,000 for unexpected expenses

\*Data from PwC's 8th Annual Employee FinancialWellness Survey (2019 results)

**43%**

43% of workers are guessing how much they need for retirement income

\*<https://www.annuity.org/retirement/retirement-statistics/>

**34%**

34% of participants did not take advantage of full match

[https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/21\\_CIR\\_HAS21\\_HAS\\_FSreport.pdf](https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/21_CIR_HAS21_HAS_FSreport.pdf)

# How Long Will Retirement Last?

According to Social Security:

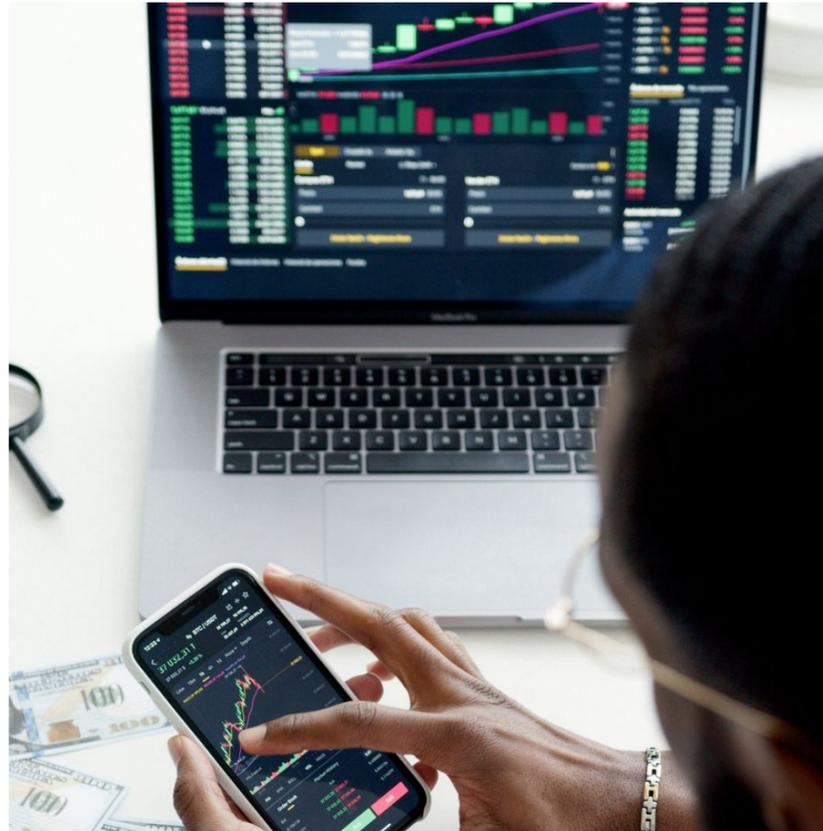
- 1 in 3 retirees may live to age 90
- 1 in 7 retirees may live to age 95

Do you have a plan for longevity in retirement?

---



# Retirement Savings & Income



**Average Account  
Balance at 65: \$279,997**



**Median Account Balance  
at 65: \$87,725**



**Avg. Social Security Check  
to Retiree: \$1,840.27**

[https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/22\\_TL\\_HAS\\_FullReport\\_2022.pdf](https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/22_TL_HAS_FullReport_2022.pdf)

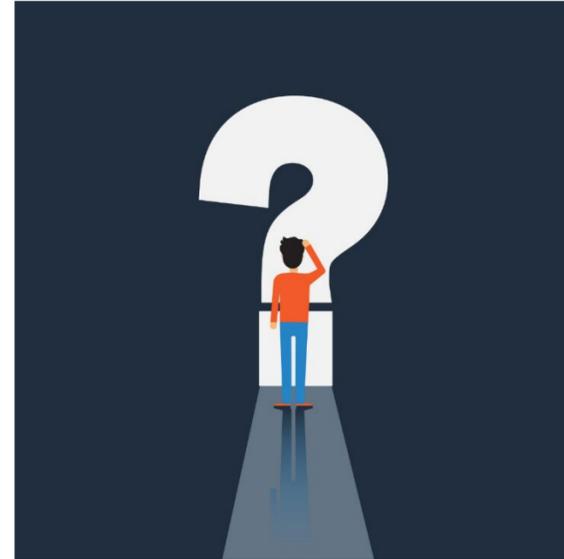
Social Security Administration as of August 2023 via Bankrate.com <https://www.bankrate.com/retirement/average-monthly-social-security-check>.

# Challenges in Saving

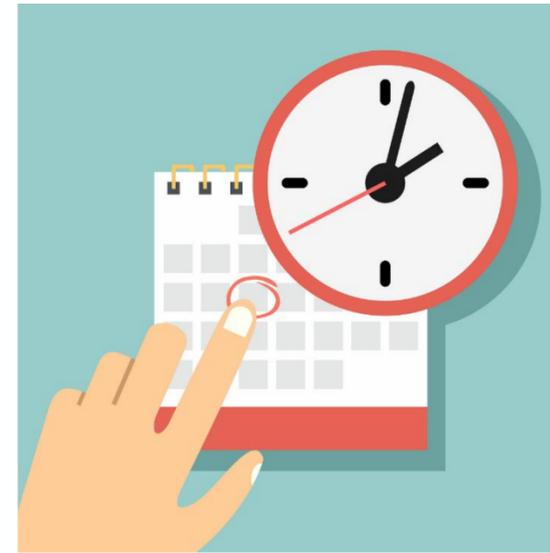
Loans/Debts



Unsure where to start



Feel it's too late



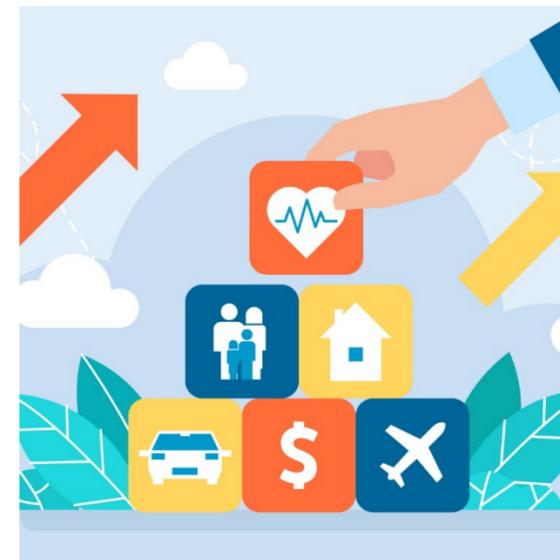
Kids



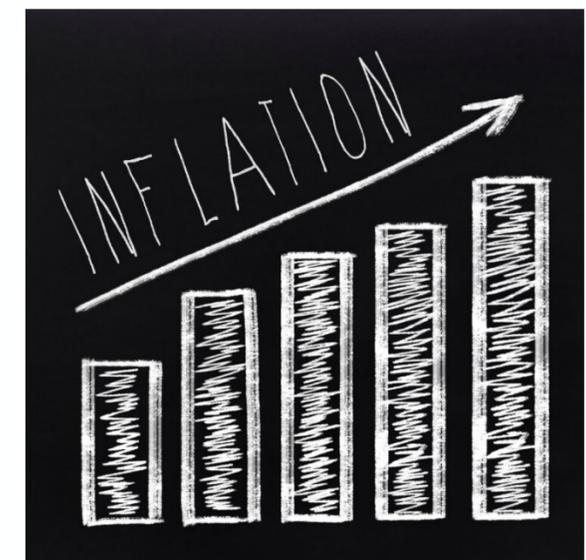
Not enough funds



Saving for other things



Unforeseen circumstances



Economy

# How to help participants

What are they asking you?  
What are we seeing?



# Enrollment & Plan Features

Enrollment  
checklist

Loans

Retirement plan  
costs

When to start  
contributing to the  
plan?

Contribution limits

Roth vs pre-tax  
contributions

Hardship

Investment  
options

# Questions From Participants



How does the plan work?



How much should I contribute & what are the ways to save?



What are my options for old retirement accounts?



Is there help available?



How do I get money from my account?

# Ways to Save

## Pre-Tax

- Two tax incentives
- Contributions are **not taxed as income today.**
- Accounts grow **tax deferred.**
- Qualified distributions are **taxable as income in retirement.**
- A great way to potentially lower taxable income each year contributions are made.

## Roth

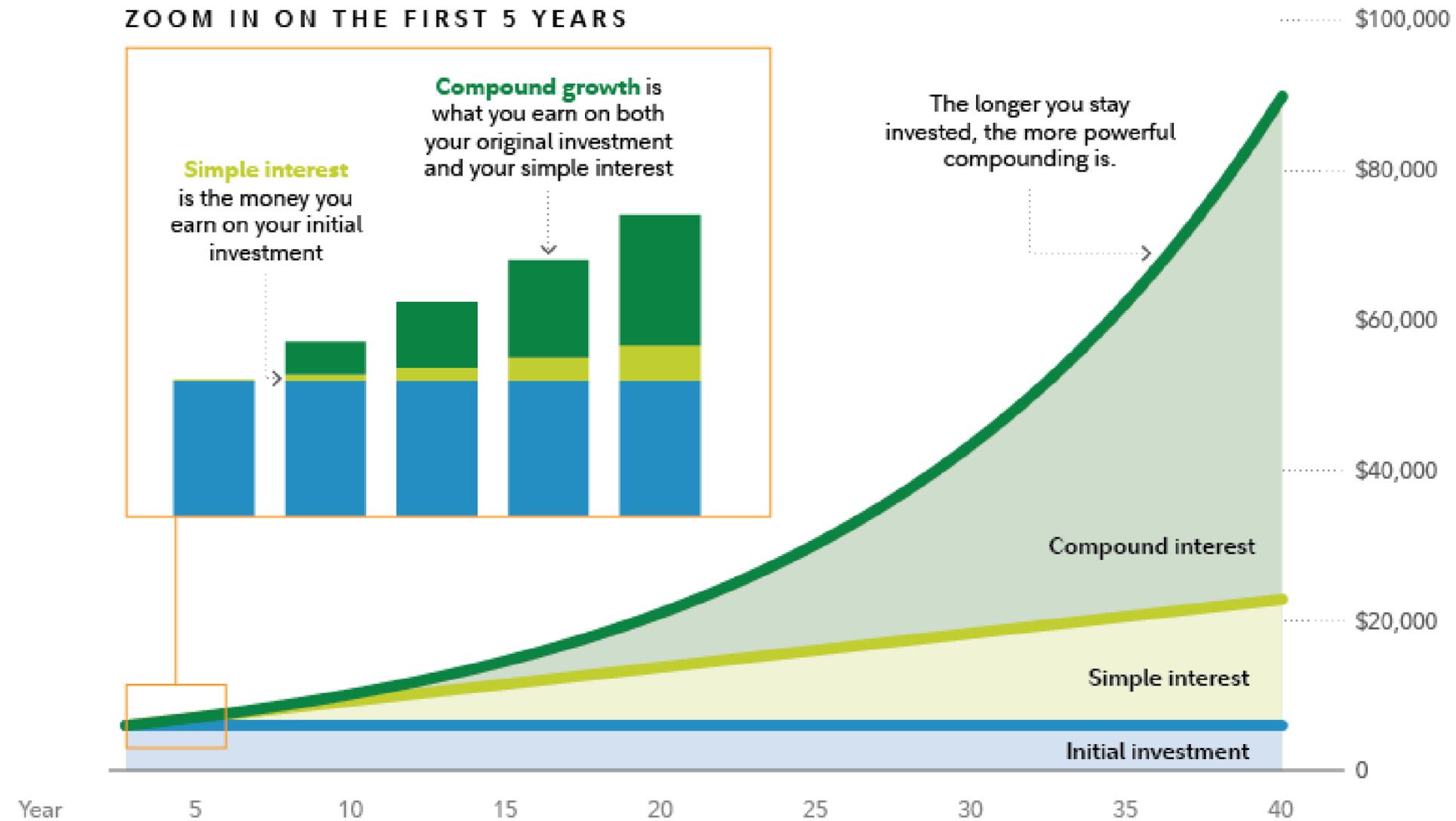
- Two tax incentives
- Contributions are **taxed as income today.**
- Accounts grow **tax-deferred.**
- Qualified distributions are **tax-free in retirement.**
- A great way to potentially generate tax-free income retirement.

**A rule of thumb is to try to save 15% of total household income**

# Potential Power of Compounding

## The potential power of **compounding**

Compounding growth supercharges your savings, and it is especially powerful if you have a long time to stay invested. A single investment of \$6,000 could grow to approximately \$90,000 after 40 years thanks to the potential power of compounding growth—earning money on the money you earn.



<https://www.fidelity.com/learning-center/trading-investing/compound-interest>

# Transformative Impact of Starting Early

**Kate**      **Derek**      **Jane**



**Age 28**  
Contributes \$6,000  
per year

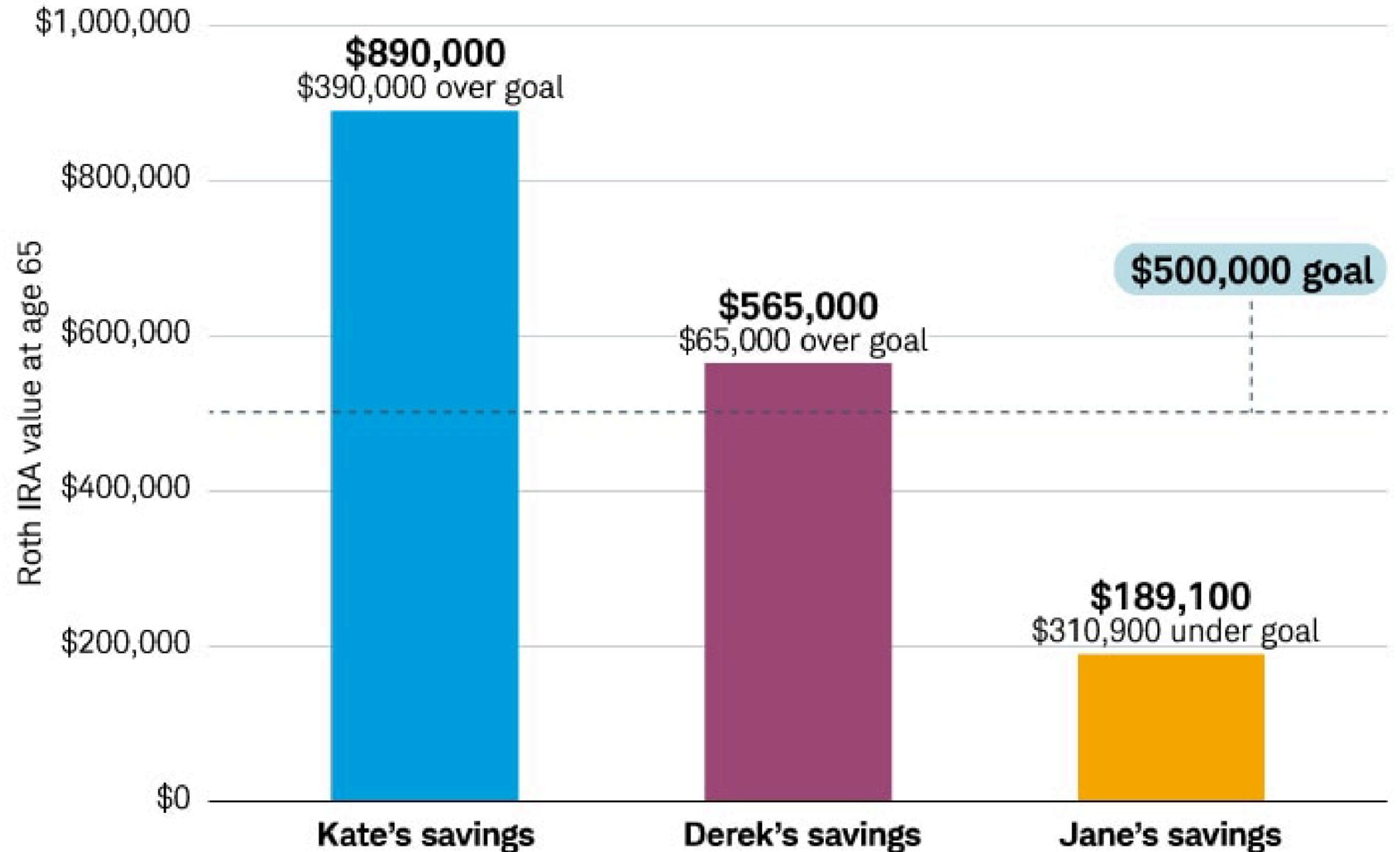


**Age 35**  
Contributes \$6,000  
per year



**Age 50**  
Contributes \$7,000  
per year\*

\*The example is hypothetical and provided for illustrative purposes only. It is not intended to represent a specific investment product. Dividends and interest are assumed to have been reinvested, and the example does not reflect the effects of taxes or fees. Assumes annual contribution of \$6,000 until age 50, and \$7,000 from age 50 to age 65; also assumes 6% average annual portfolio growth. Values are rounded.



<https://www.schwab.com/learn/story/waiting-to-save-retirement-could-cost-you>

# Health Savings Accounts

## 2024 Contribution Limits

Individual	\$4,150
Family	\$8,300
55+ Catch-up	\$1,000

- Opportunity to invest contributions
- Considerations when switching to Medicare
- Can be an important piece of retirement income

## HSA

- Three tax incentives
- Contributions are **not taxed as income today.**
- Accounts grow **tax-deferred.**
- Distributions for **qualified medical expenses are tax-free.**
- At age 65, can take penalty-free withdrawals for any reason (only tax-free for medical).

\* Must be using the high deductible health plan.

# Participant Resources



On-campus & virtual 1-1 meetings. Retirement plan questions and financial planning for all participants

Online at [www.tiaa.org](http://www.tiaa.org)

- Make investment selections
- Update beneficiary designations
- Tools & calculators

[www.tiaa.org](http://www.tiaa.org)

National Contact Center

800-842-2252



# Best Practices

What's working for you?  
Where do you need help?



# Thank you

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# Important Disclosures

This information is provided by Millennium Advisory Services, Inc., a HUB International company, and is for general informational and educational purposes only. The commentary was not drafted by Millennium Advisory Services, Inc. in its entirety and therefore we cannot guarantee the accuracy, although we believe it to be correct.

Portions of the commentary were taken from various publicly available sources believed to be reliable. The information in these materials may change at any time and without notice. The information presented here is not specific to any individual's personal circumstances.

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# Generative **AI** in Higher Education:

A **Legal Perspective** on **Artificial Intelligence Risk, Remedies, and Governance** for Private Colleges

**June 19, 2024**

**Beth Waller & Patrick Austin**



**WoodsRogers**



# AGENDA

- I. Understanding AI and its Foundations**
  - a. Use, Definition, and Basic Elements
  - b. Machine Learning
  - c. Generative AI
- II. Generative AI Legal Risks, Remedies, and Regulation**
  - a. Core Legal Risks and Remedies
  - b. Laws Governing the Use of AI
- III. Generative AI in Higher Education**
  - a. AI in Hiring and Recruitment
  - b. AI in College Admissions
- IV. AI Governance & Deployment**
- V. Looking Ahead**



# UNDERSTANDING AI AND ITS FOUNDATIONS



# AI – Definition & Elements

## Evolving definition of AI...

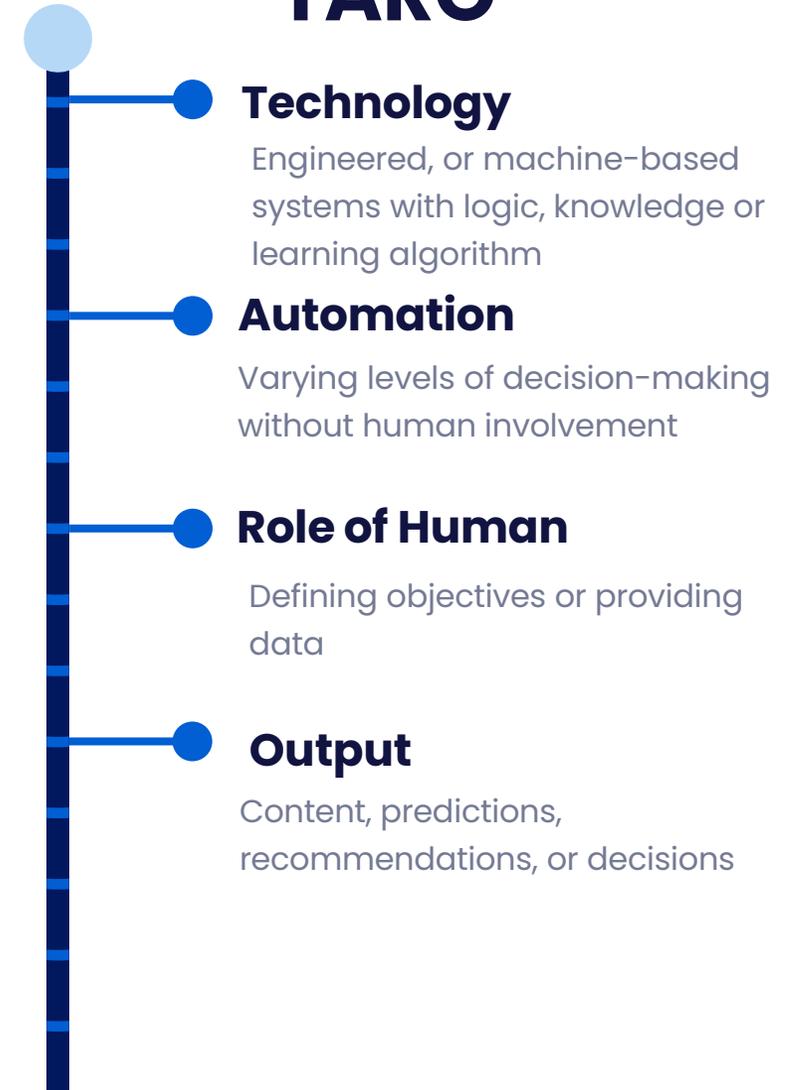
A machine-based system that uses mathematical computational techniques to perform human-like activities or tasks.

Sources: 15 U.S.C. § 9401(3); IAPP, *Key Terms for AI Governance*; Forbytes

*An AI system is a machine-based system that, for **explicit or implicit** objectives, **infers, from the input it receives, how to generate outputs** such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment*

Source: [OECD, Updates to the OECD's definition of an AI system explained \(Nov. 29, 2023\)](#).

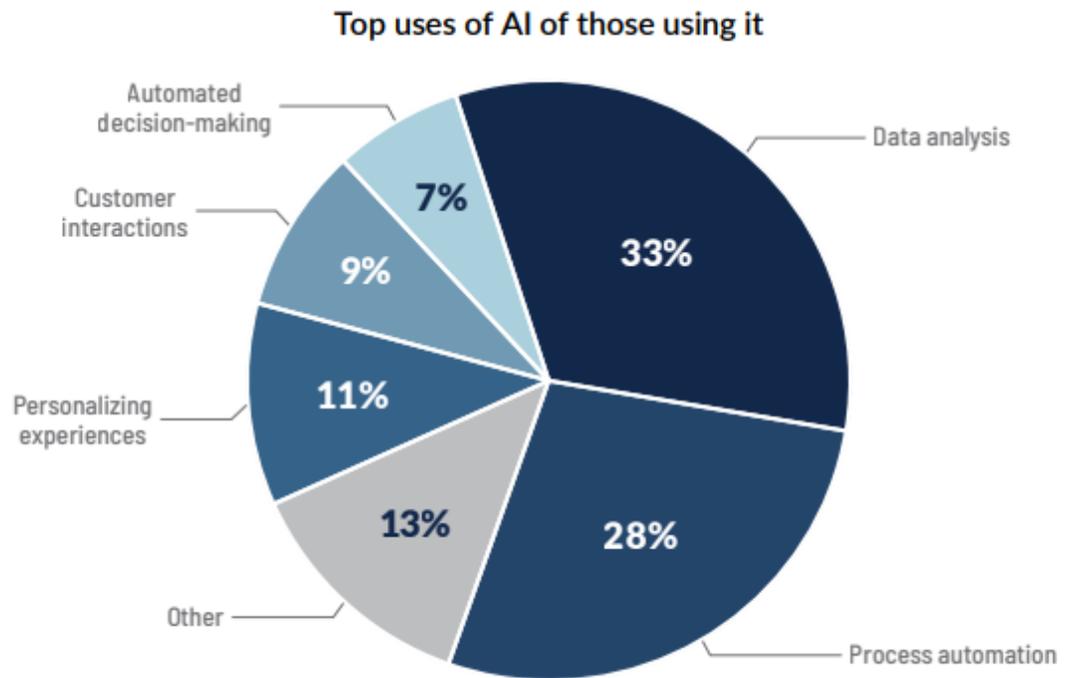
## TARO





# Use of AI in Organizations

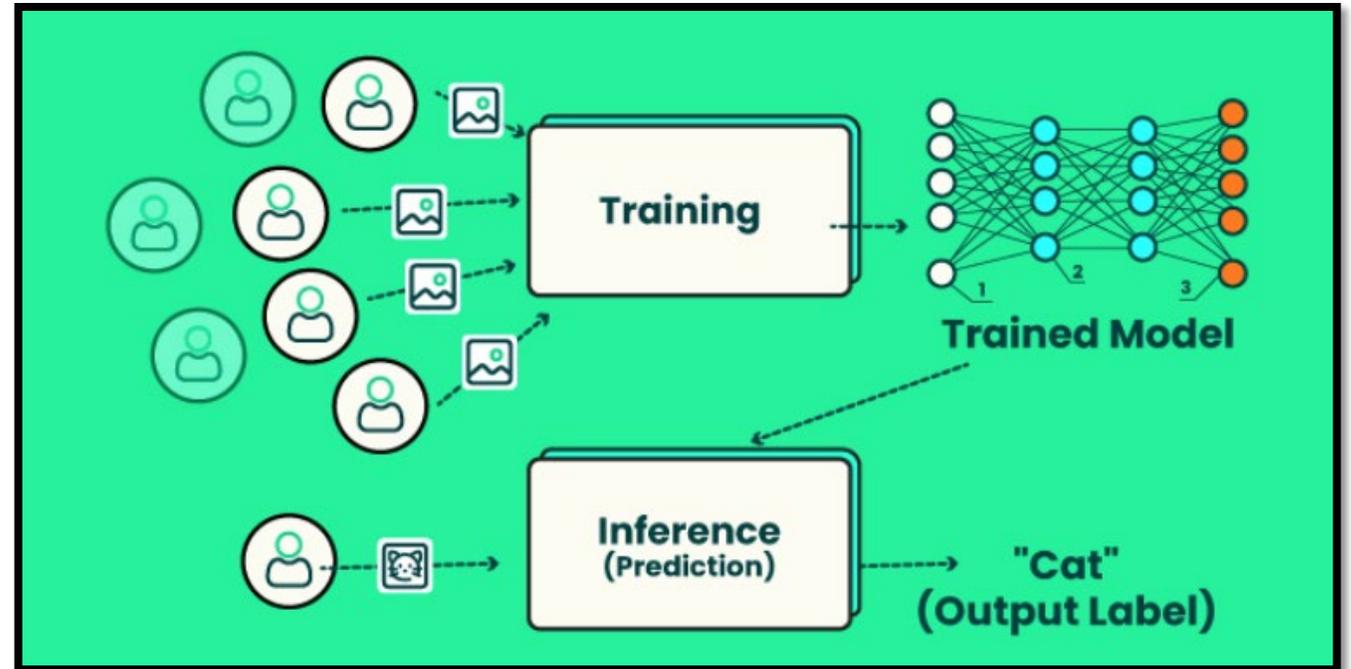
Currently use AI	Intend to use AI within the next 12 months	Not currently using AI	Unsure
52%	22%	19%	7%



Source: [IAPP/EY \(Dec. 2023\)](#)

# Machine Learning

A data processing mechanism that uses **training data** as an **input** to iteratively learn and “train” a **model** that makes predictions, inferences, or decisions to generate an **output**.



Source: [Forbytes](#)

# Machine Learning



## Supervised Learning

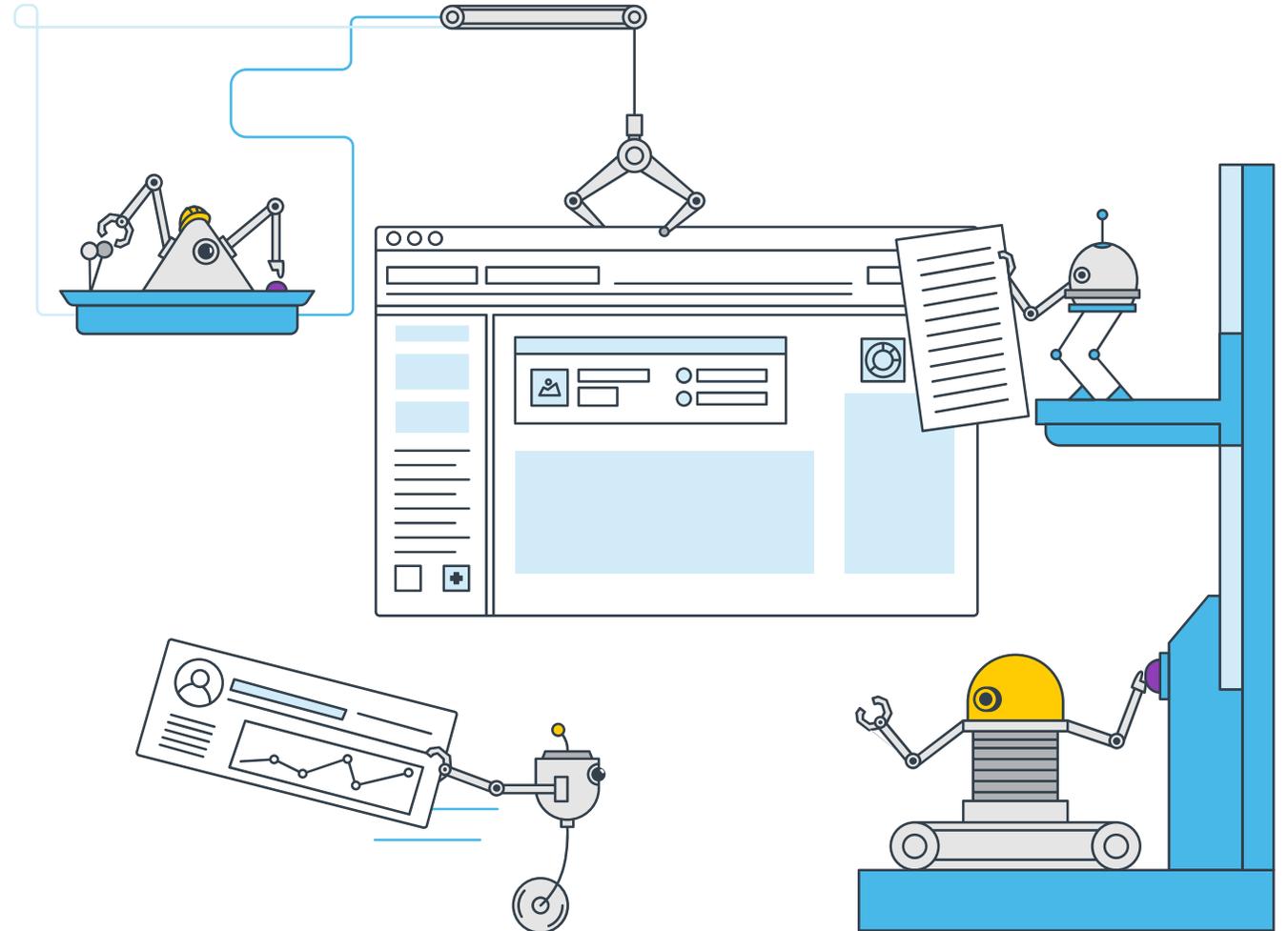
Learns from labeled (structured) data, aims to make accurate predictions.  
E.g., Image Classification

## Unsupervised Learning

Learns from unlabeled (unstructured) data to ID patterns.  
E.g., Amazon Basket Analysis

## Reinforcement Learning

Model learns through trial and error.  
E.g., an AI chess opponent



# Generative AI

AI that generates new content (such as text, images, and videos) based on learned patterns of data. E.g., ChatGPT and Bard.

Figure 1. Examples of Generative AI Models

Image Generator	Chatbot
<p data-bbox="657 508 1258 568"><b>Prompt:</b> "The Library of Congress building in the style of Van Gogh."</p> <p data-bbox="657 579 792 608"><b>Response:</b></p> 	<p data-bbox="1294 508 1895 568"><b>Prompt:</b> "Write a 4 sentence poem about the Library of Congress."</p> <p data-bbox="1294 579 1429 608"><b>Response:</b></p> <p data-bbox="1294 625 1717 776"><i>"In the heart of D.C., there stands a place A temple of knowledge, a palace of grace The Library of Congress, a marvel to see A monument to learning, for you and me</i></p> <p data-bbox="1294 825 1753 976"><i>Rows upon rows of books, towering high A treasury of history, never to die Where stories and knowledge, together reside A beacon of wisdom, that cannot be denied"</i></p>

**Source:** Stable Diffusion and ChatGPT, via CRS. The image was generated by Stable Diffusion and the text response was generated by ChatGPT.

Source: [Congressional Research Service, \*Generative Artificial Intelligence and Data Privacy: A Primer\* \(May 23, 2023\).](#)

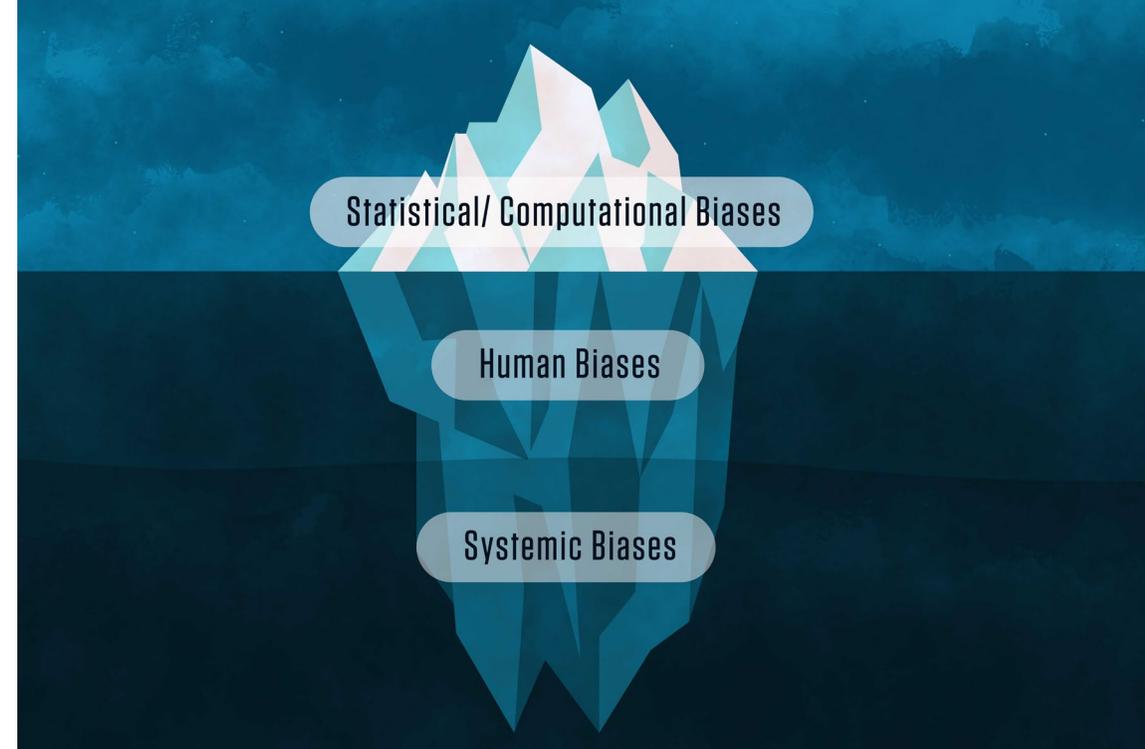


# NIST Categories of AI Bias

- **Systemic Bias:** Result from procedures and practices of institutions that operate in ways which result in certain social groups being advantaged or favored and others being disadvantaged or devalued. This need not be the result of any conscious prejudice or discrimination but rather of the majority following existing rules or norms.
  - Examples: Institutional racism and sexism.

- **Human Bias:** This type of bias is often implicit and tends to relate to how an individual or group perceives information (such as automated AI output) to make a decision or fill in missing or unknown information. Human biases are typically omnipresent in the institutional, group, and individual decision-making processes across the AI lifecycle, and in the use of AI applications once deployed.

- **Statistical and Computational Bias:** Stems from errors that result when the sample is not representative of the population. These biases arise from systematic as opposed to random error and can occur in the absence of prejudice, partiality, or discriminatory intent.
  - In AI systems, these biases are present in the datasets and algorithmic processes used in the development of AI applications, and often arise when algorithms are trained on one type of data and cannot extrapolate beyond those data.



# AI / CORE LEGAL RISKS & REMEDIES



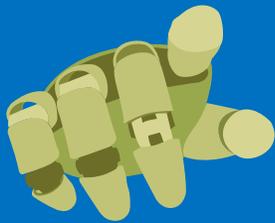
# AI / CORE LEGAL RISKS



A

## DATA PRIVACY

Relying on vast amounts of data to train and improve algorithms brings into question how to comply with privacy laws, especially when sensitive personal information is involved.



B

## INTELLECTUAL PROPERTY

Issues include ownership of training data (copyright, trademark, patent), ownership of AI-created content, and the potential to lose sensitive protected information when inputting it into AI.



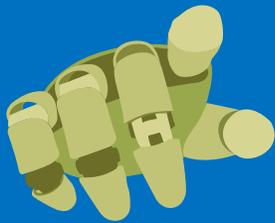
# AI / CORE LEGAL RISKS



C

## Discrimination

AI can inadvertently perpetuate bias, especially if training on random historical data.



D

## Tort Liability

If the AI system produces inaccurate results, negligent results, that harm others or other systems, then legal damages can flow from that.



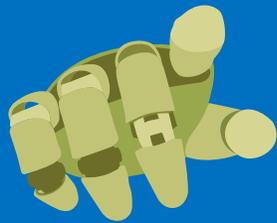
# AI / CORE LEGAL RISKS



E

## Consumer Protection

AI-use in anything affecting commerce could implicate scrutiny by the FTC or state regulators for unfair, deceptive, or abusive trade practices.



F

## Contract Liability

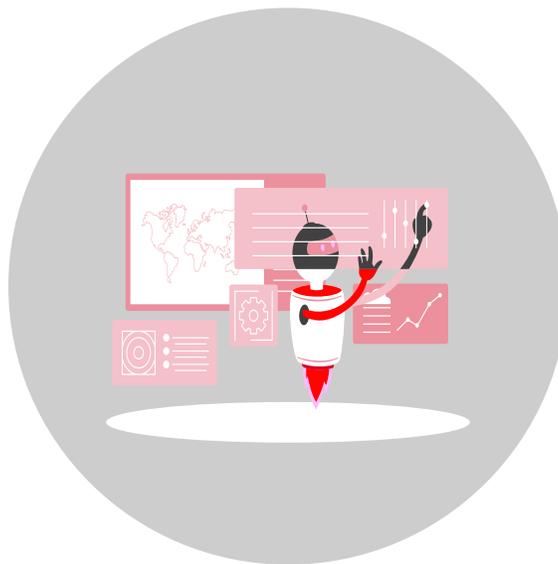
Depending on contractual terms, use of AI or sharing confidential information or trade secrets with AI could result in breach.



# Remedies



**Damages and  
Injunctions**



**Model Deletion**



**Penalties and  
Fines**

# Model Deletion

“Model deletion’ also referred to interchangeably as model or algorithmic disgorgement, algorithmic destruction, and model deletion, is the **compelled destruction or dispossession** of data, algorithms, models, and associated work products that are created or shaped by illegal means.”

Source: [Jevan Hutson & Ben Winters, \*America’s Next “Stop Model!”: Model Deletion\*, 1 GEORGETOWN LAW TECH. REV. 124, 128-29 \(Jan. 2024\).](#)



# Model Deletion – FTC

The FTC Bureau of Consumer Protection has already “required across multiple cases that models trained on illegally collected data be deleted.”

– Samuel Levine, Director, Bureau of Consumer Protection, January 25, 2024

Source: [Samuel Levine, Remarks of Samuel Levine at the FTC’s Summit on Artificial Intelligence \(Jan. 25, 2024\).](#)



# Model Deletion – *In re X-Mode Social* (Jan. 9, 2024)



D. “**Data Product**” means any model, algorithm or derived data, in Respondents’ custody or control developed, in whole or part, using Historic Location Data. Data Product includes but is not limited to any derived data produced via inference (manual or automated) or predictions such as audience segments.

F. “**Historic Location Data**” means any Location Data that Respondents collected from consumers without consumers’ Affirmative Express Consent.

A. “**Affirmative Express Consent**” means any freely given, specific, informed, and unambiguous indication of an individual consumer’s wishes demonstrating agreement by the individual, such as by an affirmative action, following a Clear and Conspicuous Disclosure to the individual of: (1) the categories of information that will be collected; (2) the purpose(s) for which the information is being collected, used, or disclosed; (3) the hyperlink to a document that describes the types of entities to whom the Covered Information is disclosed; and (4) the hyperlink to a simple, easily-located means by which the consumer can withdraw consent and that Clearly and Conspicuously describes any limitations on the consumer’s ability to withdraw consent. The Clear and Conspicuous Disclosure must be separate from any “privacy policy,” “terms of service,” “terms of use,” or other similar document.

The following does not constitute Affirmative Express Consent:

1. Inferring consent from the hovering over, muting, pausing, or closing of a given piece of content by the consumer; or
2. Obtaining consent through a user interface that has the effect of subverting or impairing user autonomy, decision-making, or choice.

# Model Deletion – *In re X-Mode Social* (Jan. 9, 2024)



## XIII. Deletion

**IT IS FURTHER ORDERED** that Respondents and Respondents’ officers, agents, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, must, unless prohibited by law:

C. Within 90 days after the effective date of this Order, delete or destroy all Data Products, and provide a written statement to the Commission, pursuant to Provision XVII, confirming such deletion or destruction.

# Laws Governing Use of AI



# Existing Law Applies to AI

- **“There is no AI exemption from the laws on the books...”**

–Linda M. Khan, FTC Chair

Source: [Remarks of Chair Lina M. Khan, FTC Tech Summit \(Jan. 25, 2024\)](#)

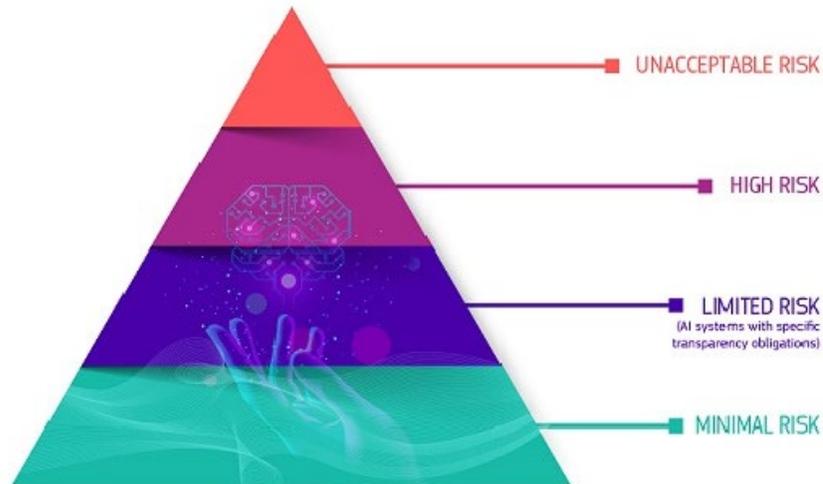
# THE RACE TO REGULATE AI



# E.U. AI Act

- The European Parliament adopted the Artificial Intelligence Act (AI Act) on 3.13.24. It is considered the world's first comprehensive horizontal legal framework for AI.
- Provides for EU-wide rules on data quality, transparency, human oversight and accountability.
- **Applies to “providers” of AI systems** (i.e., companies that develop AI systems with a view to placing them on the market or putting them into service under their own name or trademark, whether for payment or free of charge). The AI Act also applies to importers and distributors of AI systems in the EU. Importantly, the AI Act **also applies to “deployers”**, which are defined as natural or legal persons using AI under their authority in the course of their professional activities.
- Fines for non-compliance: up to **35 million euros or 7% of global annual revenue** (whichever is higher).

The Regulatory Framework defines 4 levels of risk in AI:



## STEP 1



A high-risk AI system is developed.

## STEP 2



It needs to undergo the conformity assessment and comply with AI requirements.\*

\*For some systems a notified body is involved too.

## STEP 3



Registration of stand-alone AI systems in an EU database.

## STEP 4



A declaration of conformity needs to be signed and the AI system should bear the CE marking.

**The system can be placed on the market.**

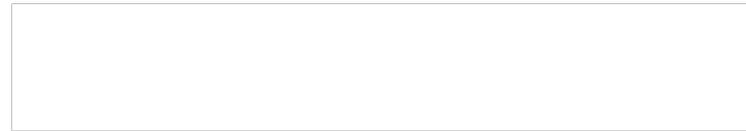
If substantial changes happen in the AI system's lifecycle

GO BACK TO STEP 2

Source: [European Commission](#)



# Executive Order 14110



OCTOBER 30, 2023

## Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence



► BRIEFING ROOM ► PRESIDENTIAL ACTIONS

Source: [E.O. 14110 \(Oct. 30, 2023\)](#).



# Executive Order 14110

(B) identify options, including potential legislative measures, to strengthen or develop additional Federal support for workers displaced by AI and, in consultation with the Secretary of Commerce and the Secretary of Education, strengthen and expand education and training opportunities that provide individuals pathways to occupations related to AI.

(d) To help ensure the responsible development and deployment of AI in the education sector, the Secretary of Education shall, within 365 days of the date of this order, develop resources, policies, and guidance regarding AI. These resources shall address safe, responsible, and nondiscriminatory uses of AI in education, including the impact AI systems have on vulnerable and underserved communities, and shall be developed in consultation with stakeholders as appropriate. They shall also include the development of an “AI toolkit” for education leaders implementing recommendations from the Department of Education’s AI and the Future of Teaching and Learning report, including appropriate human review of AI decisions, designing AI systems to enhance trust and safety and align with privacy-related laws and regulations in the educational context, and developing education-specific guardrails.

Source: [E.O. 14110 \(Oct. 30, 2023\)](#).



# FACT SHEET: Biden-Harris Administration Unveils Critical Steps to Protect Workers from Risks of Artificial Intelligence

Pursuant to President Biden's landmark Executive Order, the following principles apply to the development and deployment of AI systems in the workplace:

- **Centering Worker Empowerment:** Workers and their representatives, especially those from underserved communities, should be informed of and have genuine input in the design, development, testing, training, use, and oversight of AI systems for use in the workplace.
- **Ethically Developing AI:** AI systems should be designed, developed, and trained in a way that protects workers.
- **Establishing AI Governance and Human Oversight:** Organizations should have clear governance systems, procedures, human oversight, and evaluation processes for AI systems for use in the workplace.
- **Ensuring Transparency in AI Use:** Employers should be transparent with workers and job seekers about the AI systems that are being used in the workplace.
- **Protecting Labor and Employment Rights:** AI systems should not violate or undermine workers' right to organize, health and safety rights, wage and hour rights, and anti-discrimination and anti-retaliation protections.
- **Using AI to Enable Workers:** AI systems should assist, complement, and enable workers, and improve job quality.
- **Supporting Workers Impacted by AI:** Employers should support or upskill workers during job transitions related to AI.
- **Ensuring Responsible Use of Worker Data:** Workers' data collected, used, or created by AI systems should be limited in scope and location, used only to support legitimate business aims, and protected and handled responsibly.

Source: [FACT SHEET: Biden-Harris Administration Unveils Critical Steps to Protect Workers from Risks of Artificial Intelligence](#) (May 16, 2024).

# Virginia Executive Order 30 On AI

For Immediate Release: January 18, 2024

Contacts: Office of the Governor: Christian Martinez, Christian.Martinez@governor.virginia.gov



## Governor Glenn Youngkin Signs Executive Order on Artificial Intelligence

*EO 30 implements AI standards and guidelines to protect Virginians, utilizing \$600,000 in proposed budgetary funds for AI pilots in state agencies*

**RICHMOND, VA** – Governor Glenn Youngkin today issued [Executive Order 30](#) on Artificial Intelligence (AI), which implements [AI Education Guidelines](#) for the classroom and [AI Policy and Information Technology Standards](#) that safeguard the state’s databases while simultaneously protecting the individual data of all Virginians.

The Governor’s Executive Order combines strong protections for Virginia residents and businesses while recognizing opportunities presented by AI innovation. As one of the first states in the country to issue AI standards, Virginia is leading the way on AI guidelines and pilots.



Commonwealth of Virginia  
Office of the Governor

### *Executive Order* **NUMBER THIRTY (2024)**

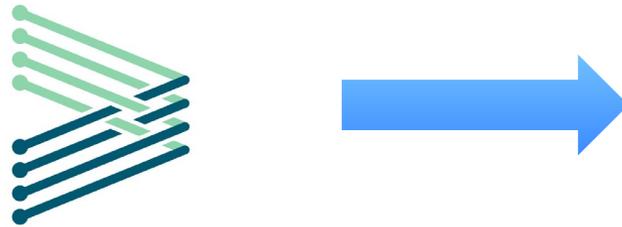
#### **IMPLEMENTATION OF STANDARDS FOR THE SAFE USE OF ARTIFICIAL INTELLIGENCE ACROSS THE COMMONWEALTH**

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to promulgate important safety standards to ensure the responsible, ethical, and transparent use of artificial intelligence technology by state government in order to protect the rights of Virginians, to provide best-in-class state government services, and to ensure that our students are well prepared for this technology.

# Virginia Executive Order 30 On AI

## Preamble

In order to implement the guardrails for the use of AI technologies across state government, I am directing the Virginia Information Technologies Agency (VITA) to publish the AI Policy Standards and AI Information Technology Standards and to make them available to all Executive Branch Agencies and the general public. I direct all Executive Branch Agencies to follow the approval processes and procedures as defined in those standards. I direct the Department of Education and State Council of Higher Education for Virginia, in consultation with the Virginia Community College System, to develop and issue the tools, instructional resources, and support as needed under the Education Guidelines to provide the necessary assistance around the considerations, implementation, and use of AI at all levels of education. Furthermore, the Secretary of Public Safety and Homeland Security, in conjunction with the Office of the Attorney General, is directed to develop standards for the appropriate use of AI applicable to all Executive Branch law enforcement agencies and enforcement personnel.



VIRGINIA  
IT AGENCY

## Artificial Intelligence

Pursuant to Governor Youngkin's Executive Order 30 ([EO 30 PDF](#) | [news release](#)), below are the Virginia standards on Artificial Intelligence use by state agencies.

### Standards

- [Artificial Intelligence Standard \( Word version \)](#)
- [Utilization of Artificial Intelligence by COV Policy Standard \( Word version \)](#)

### Guidance

- [Artificial Intelligence Registration and Approval](#) (presentation)
- [EO 30 Agency Information Session](#) (presentation) (05/22/2024)

### Resources

- [Registering AI technologies - entities with CTP access](#) (job aid)
- [Agency head AI approval in Commonwealth Technology Portfolio \(CTP\) Planview](#) (job aid)
- [Higher education AI registration process](#) (job aid)

### Information Sessions

- Artificial Intelligence (AI) Information Session - May 2024

#### Introduction and Executive Order Summary



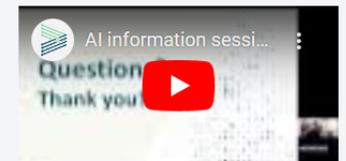
[View the Introduction video in full screen →](#)

#### AI Registration and Oversight, Secretary Approval



[View the Registration video in full screen →](#)

#### Question and Answer



[View the Questions video in full screen →](#)

# Virginia Executive Order 30 On AI

## V. Establishment of an Artificial Intelligence Task Force

The Director of the Office of Regulatory Management in conjunction with the Secretary of Administration, shall convene an Artificial Intelligence Task Force to provide ongoing recommendations on the implementation of the above standards and Education Guidelines as well as provide recommendations on the implementation of any AI pilots conducted by executive branch agencies. These recommendations shall be provided by the task force on a biannual basis.

## III. Education Guidelines

The AI Education Guidelines enacted under this Executive Order recognize the dual nature—both the opportunities and risks—of this developing technology in education. K-12 schools and postsecondary institutions must embrace innovation, experimentation, and new educational opportunities for students as well as ensure appropriate guardrails and necessary constraints exist to safeguard individual data privacy and mitigate discriminatory outcomes. Governing boards and system leaders at every education level require flexibility to offer different pathways for their institutions and schools based on their readiness and willingness to integrate this technology, while also prioritizing training for students, educators, and faculty to ensure the responsible and ethical use of AI technology. The Guidelines are also meant to support education institutions to foster learning environments that prepare all students with the knowledge, competencies, and skills for successful careers that utilize AI technology.

The AI Education Guidelines applies to both K-12 and postsecondary institutions [AI Education Guidelines](#)



## Principles for the Use of AI in Education

### GUIDELINES FOR AI INTEGRATION THROUGHOUT EDUCATION IN THE COMMONWEALTH OF VIRGINIA

- Do no harm
  - **All integration of AI in education must be in accordance with the policy and IT standards that are set forth in the Executive Order and in other state and federal policies.** This includes ensuring the safeguarding of the privacy, security, and confidentiality of personally identifiable information, ensuring that algorithms are not based on inherent biases that lead to discriminatory outcomes.
- Prioritize integrity
- Augment, not replace humans
  - **AI cannot and should not ever replace human judgement.** Although synthesis and analysis of information can be expedited through AI, it will never replace teachers.
- Harness AI to empower student success
- Work in partnership
- Be constantly discerning and responsive to the continuous expansion of AI capabilities and uses

### Strategies for Successful Integration of AI in Education

- Provide professional development
- Spotlight success
- Host stakeholder conversations
- Set the right conditions
  - Outline policies and protocols around data privacy, honor code, student code of conduct, acceptable use, and ethical considerations when using AI.



## GUIDELINES FOR AI INTEGRATION THROUGHOUT EDUCATION IN THE COMMONWEALTH OF VIRGINIA

### **Roles & Responsibilities of Governing Boards/Leadership & Educators**

- Establish culture of integrity
  - Define what this culture looks like.
  - Discuss the honor code often with students and parents
- **Establish an AI Acceptable Use Policy (AI AUP) inside and outside of the classroom.**
  - Review and discuss the AI AUP with parents, students and faculty.
  - Develop accountability measures for the AI AUP.
- **Design assignments and assessments that encourage critical thinking and original thoughts and human judgement.**
- **Create opportunities for collaboration and peer review.**
- **Integrate digital citizenship with Standards of Learning strands.**
  - Strands include multimodal literacies, computations, impacts of computing, etc.
- **Clarify expectations for use of AI in assignments.**
- **Communicate clearly and specifically how students can use generative AI in assignments.**

# AI / USE IN HIGHER EDUCATION HIRING & RECRUITMENT





# AI Hiring Discrimination

- EEOC v. iTutorGroup
- EEOC settled its first-ever AI discrimination in hiring lawsuit
  - iTutorGroup used recruitment software
  - Background: An applicant rejected from a position at iTutorGroup thought something was fishy when they submitted the same resume for the same position twice. However, the second submission included a younger birthdate. The second submission led an interview.
    - The applicant decided to file a complaint with the EEOC, which filed a lawsuit against iTutorGroup on behalf of more than 200 applicants alleging age and gender discrimination.
    - The lawsuit alleged that the company illegally screened out women applicants over 55 and men over 60.
  - iTutorGroup will pay \$365,000 to a group of rejected job seekers age 40+
  - The company also agreed to adopt anti-discrimination policies and conduct trainings to ensure compliance with equal employment opportunity laws. They must also consider anew all applicants that were purportedly rejected because of their age.



# Amazon Scrapped AI Recruiting Tool

- Experimented with AI tool to review applicants' resumes and score applicants based on review of resumes of successful candidates, who were mainly men.
- Result:
  - AI taught itself that male candidates were preferable
  - Penalized resumes that included words such as "women's" and downgraded graduates of women's colleges
- Amazon tried to correct the tool but ultimately abandoned it in 2018 because of concerns the bias could not be eliminated.



# EEOC Guidance on Use of AI and ADA Compliance

- The EEOC issued a new [technical assistance document](#) on 7.26.23 describing reasonable accommodation obligations employers have when using AI to screen candidates or assess worker performance, particularly in the context of complying with the Americans with Disabilities Act (ADA).
  - Context: The ADA, a federal law, mandates employers offer reasonable accommodations to ensure applicants have equal opportunity during the hiring process and to ensure qualified employees can perform the essential functions of their position.
  - The EEOC's most recent guidance focuses on the obligations arising when applicants or employees have vision impairments that require accommodation.
- The EEOC stressed that AI decision-making tools might unintentionally screen out qualified individuals with disabilities in the application process and could negatively impact qualified employees on the job – which could be ADA violations.
- For example, an applicant or employee may have a visual disability that reduces the accuracy of an AI assessment used to evaluate them.
- Technical assistance documents do not carry the force of the law. They are not statutes or fully formalized regulations. However, they can be cited by EEOC investigators and lawyers in administrative and civil actions.

## Example:

- An employer uses an AI tool to analyze an employee's average number of keystrokes per minute to evaluate productivity.
- An employee with a vision impairment who uses voice recognition software instead of a keyboard may be rated poorly by the algorithm and thus lose out on a promotion or other job opportunity as a result.
- **According to the EEOC, this could be considered a violation of the ADA.**

# AI / USE IN COLLEGE ADMISSIONS





# USING AI TOOLS IN THE COLLEGE ADMISSIONS PROCESS

- September 2023 survey conducted by Intelligent on the use of AI in college admissions.
  - Polled nearly 400 education professionals in both K-12 and higher education.
- Survey results:
  - **50 percent of higher education admissions offices are using AI.** That number is expected to rise to more than 80 percent in 2024, according to the survey.
  - **38 percent of private colleges report using AI for admission tasks.**
  - More than 70 percent of respondents stated they use AI to review recommendation letters and transcripts.
  - 61 percent of respondents stated they use AI to communicate with applicants through some form of chatbot or automated messaging
  - 60 percent of respondents stated they use AI to review personal essays
  - 50 percent of respondents stated they use AI to conduct interviews.

# Pointers to Ensure Fair AI Use and Mitigate Risk of Potential Discrimination Claims

- **Conduct “Diverse Testing”:** Before implementing an AI tool, rigorously test it using diverse data sets.
- **Regularly Review Your AI Tools:** In addition to evaluating any AI tools you intend to use for HR purposes before you implement them to ensure they don’t end up resulting in discriminatory behavior, you should continue to periodically review them to make sure things stay compliant.
  - The EEOC stated organizations cannot “pass the buck” and blame software vendors when an org’s AI commits discriminatory or biased acts with your applicants or employees.
- **Conduct Routine “Bias Audits”:** Regularly conduct bias audits to assess whether an AI tool results in adverse impact based on race, gender, ethnicity, age, and/or intersectional identities.
- **Train Your Teams:** Make sure they have the knowledge and skills to utilize whatever AI tools you adopt without inadvertently perpetuating biases. Besides your regular anti-discrimination training, you should ensure they receive support related to the application and interpretation of AI in all HR functions.
- **Establish Transparent Policies & Open Channels of Communication:** You should foster an environment where applicants and employees are aware of the use of AI in the HR environment, and they feel comfortable voicing concerns about perceived biases
- **Incorporate Feedback Loops:** No matter how advanced your predictive analytics, it’s hard to predict the real-world dynamics that can arise once you deploy your AI systems.
  - Try to encourage feedback from internal stakeholders – and external candidates and other third parties – regarding their experiences with your AI-driven processes.

# AI GOVERNANCE





# AI Governance Defined

**“Organizational AI governance refers to the internal guidelines and practices organizations follow to ensure responsible development, deployment or use of AI by that organization.”**

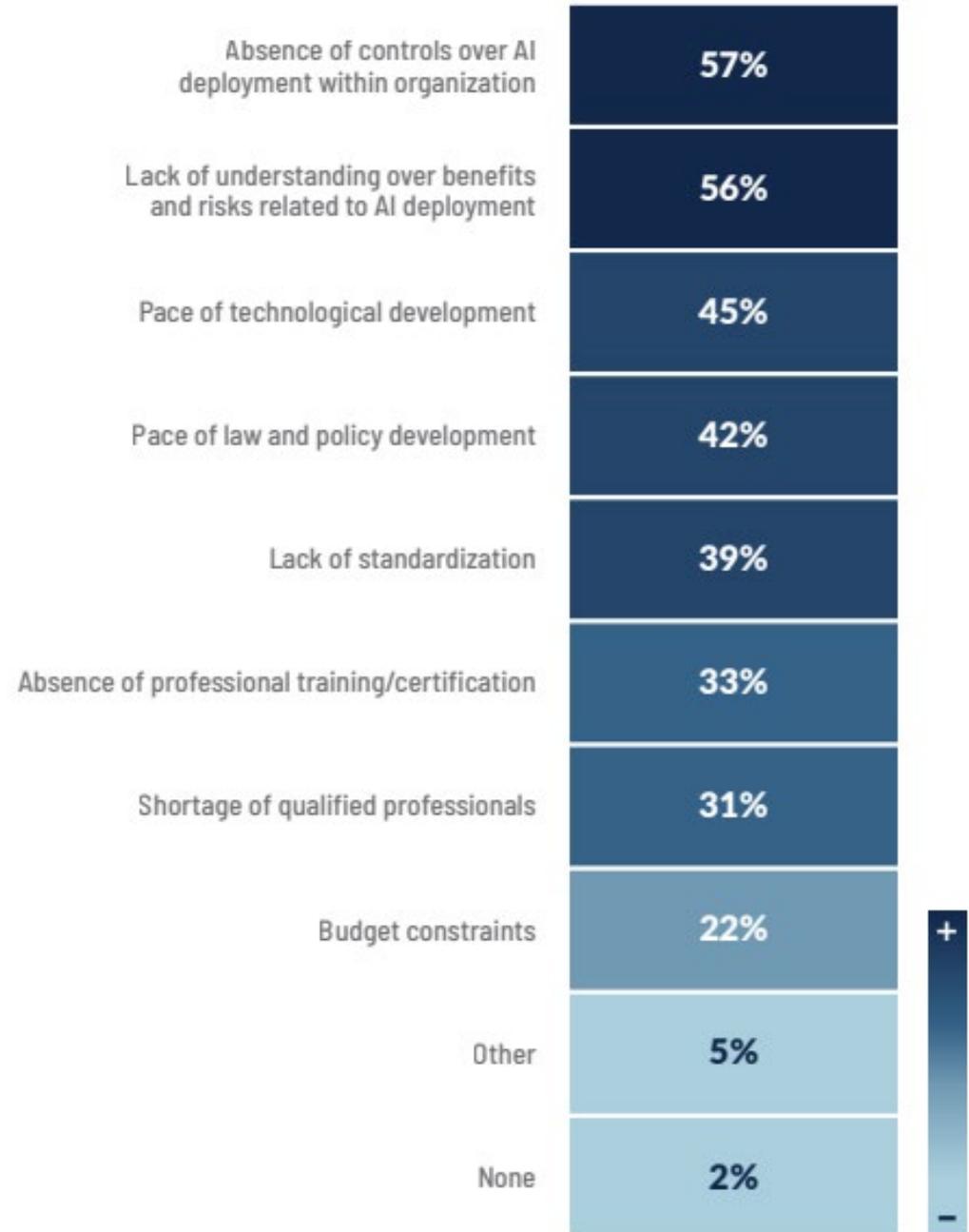
Source: [IAPP/EY \(Dec. 2023\)](#)

**“AI governance encompasses oversight mechanisms that address risks like bias, privacy infringement and misuse while fostering innovation and trust.”**

Source: [IBM \(Nov. 2023\)](#)



# Challenges in Implementing AI Governance



Source: [IAPP/EY \(Dec. 2023\)](#)



# AI Governance Examples

Examples of AI governance encompass a range of policies, frameworks and practices that organizations and governments implement to ensure the responsible use of AI technologies. These examples demonstrate how AI governance happens in different contexts:

**Corporate AI Ethics Boards:** Many companies have established ethics boards or committees to oversee AI initiatives, ensuring they align with ethical standards and societal values. These boards often include cross-functional teams from legal, technical and policy backgrounds.

**Organization for Economic Co-operation and Development (OECD) AI Principles:** Adopted by over 40 countries, the OECD's AI Principles emphasize responsible stewardship of trustworthy AI, including transparency, fairness and accountability in AI systems. ***Today, the E.U., the Council of Europe, the U.S., and the United Nations use the OECD's definition of an AI system and lifecycle below in their legislative and regulatory frameworks and guidance.***

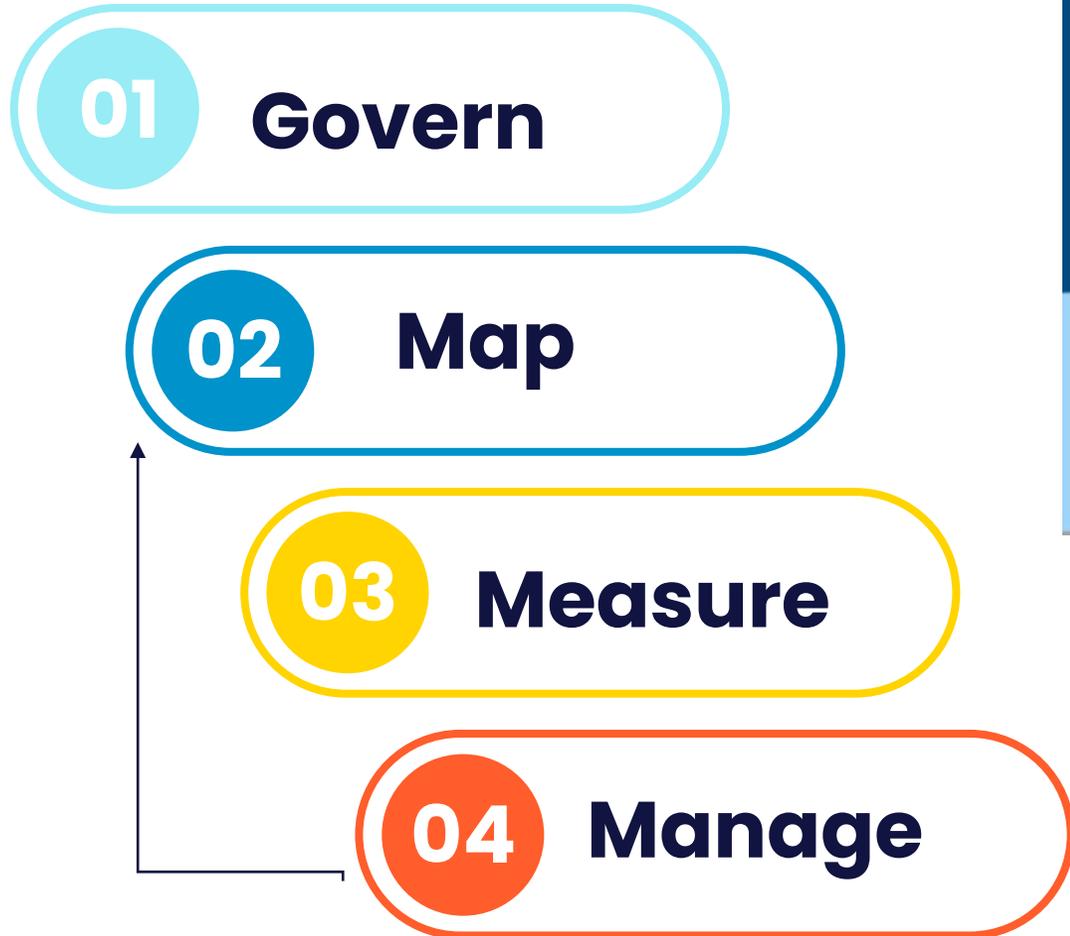
**SR-11-71:** Regulatory model governance standard for effective and strong model governance in U.S. banking. SR-11-71 requires U.S. bank officials to apply company-wide model risk management initiatives and maintain an inventory of models implemented for use, under development for implementation, or recently retired.

**Canada's Directive on Automated Decision-Making:** Framework for how the Canadian government utilizes AI. The Directive relies on a scoring system to assess the human intervention, peer review, monitoring and contingency planning needed for an AI tool built to serve citizens. Organizations creating AI solutions with a high score must conduct two independent peer reviews, offer public notice in plain language, develop a human intervention failsafe and establish recurring training courses for the system.



# AI Governance: Example Framework

NIST AI Risk Management Framework (“RMF”) Playbook





# Deploying AI Governance

The governance of AI involves establishing robust control structures containing policies, guidelines and frameworks to address these challenges. It involves setting up mechanisms to continuously monitor and evaluate AI systems, ensuring they comply with established ethical norms and legal regulations. Here is a sample deployment roadmap to consider:

- **AI Performance Dashboard:** Utilize a dashboard that provides real-time updates on the health and status of AI systems, offering a clear overview for quick assessments.
- **Metrics:** Implement an overall performance/health score for AI models using intuitive and easy-to-understand metrics to simplify monitoring.
- **Automated monitoring:** Employ automatic detection systems for bias, drift, performance and anomalies to ensure models function correctly and ethically.
- **Performance alerts:** Set up alerts for when a model deviates from its predefined performance parameters, enabling timely interventions.
- **Customize metrics:** Define custom metrics that align with the organization's key performance indicators (KPIs) and thresholds to ensure AI outcomes contribute to business objectives.
- **Audit trails:** Maintain easily accessible logs and audit trails for accountability and to facilitate reviews of AI systems' decisions and behaviors.
- **Open-source tools compatibility:** Choose open-source tools compatible with various machine learning development platforms to benefit from the flexibility and community support.
- **Seamless integration:** Ensure that the AI governance platform integrates seamlessly with the existing infrastructure, including databases and software ecosystems, to avoid silos and enable efficient workflows.



# Looking Ahead

- **Expect More State AI Laws**
  - **Colorado:** On 5.17.24, Colorado became the first state to enact comprehensive AI legislation. Under the law, developers and deployers of AI systems must exercise “reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination” in high-risk AI systems.
  - **New York:** NYC’s Automated Employment Decision Tool law requires employers using AI as part of their hiring process to perform an **annual audit of their recruitment technology**. These audits must be performed by a third party and check for instances of bias—intentional or otherwise—built into these systems. Failure to comply could lead to civil penalties.
  - **Utah:** Under Utah’s recently-enacted AI Policy Act, covered companies must disclose when a consumer is interacting with generative AI, or materials created by generative AI, at the onset of any communication.
  - **California:** The California Privacy Protection Agency released draft automated decision-making technology (ADMT) regulations. The proposed regs would implement consumers’ right to opt out of, and access information about, businesses’ uses of ADMT, as provided for by the California Consumer Privacy Act (CCPA).
- **Federal AI Law Unlikely**
  - Multiple proposals, none expected to pass in 2024.
  - Bipartisan group of Senators released a 31-page AI “roadmap” but no legislative language.





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**WoodsRogers**



**TITLE**

NEW RULES

We are  
springing  
into  
action

# **RAPID RESPONSE SUMMARY SESSION**

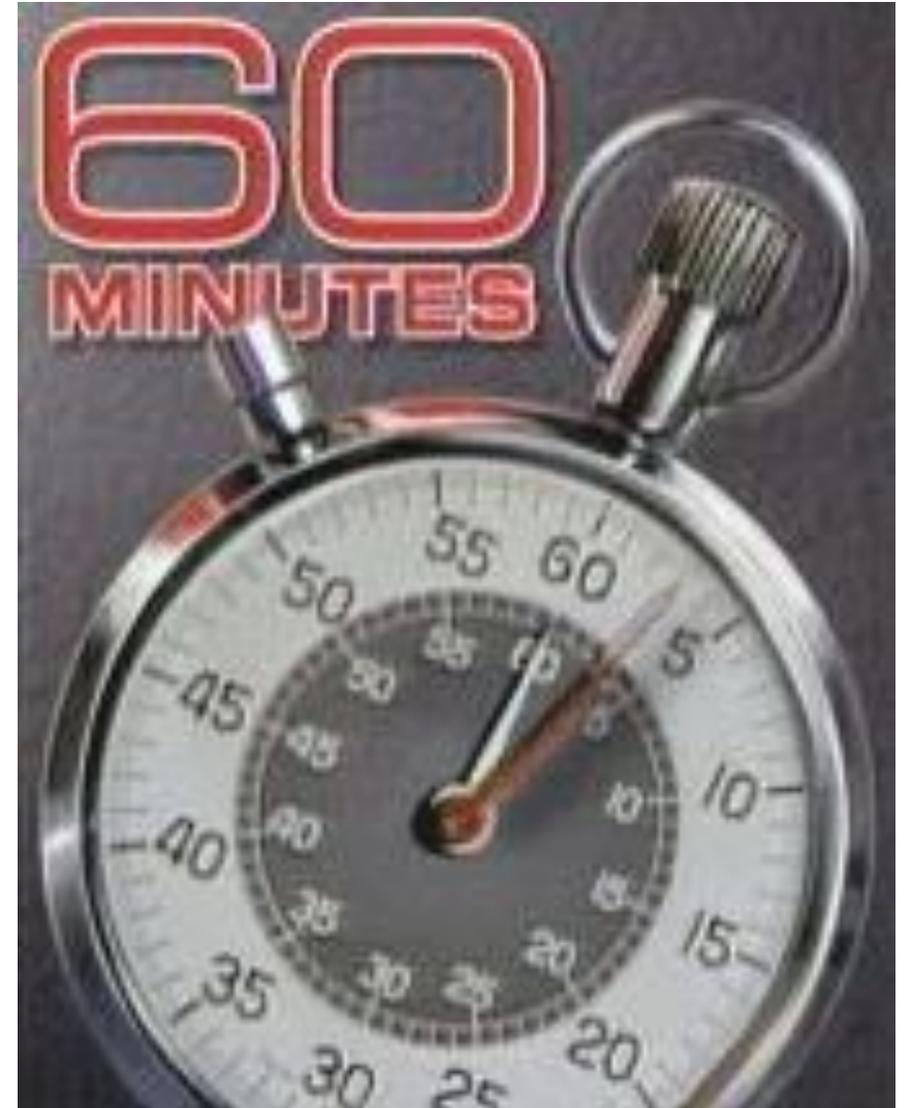
2024 Final Title IX Regulations Session

*June 19, 2024*

Martha Compton

# THIS IS (ONLY) 60 MINUTES...

- This is not legal advice.
- So much more to come, and much that will be unanswered
- 1,577 typed pages
- Published in Federal Register April 29
- 240,000+ comments
- August 1, 2024 implementation date



# BIG PICTURE



# HERE WE GO AGAIN? NOT QUITE.

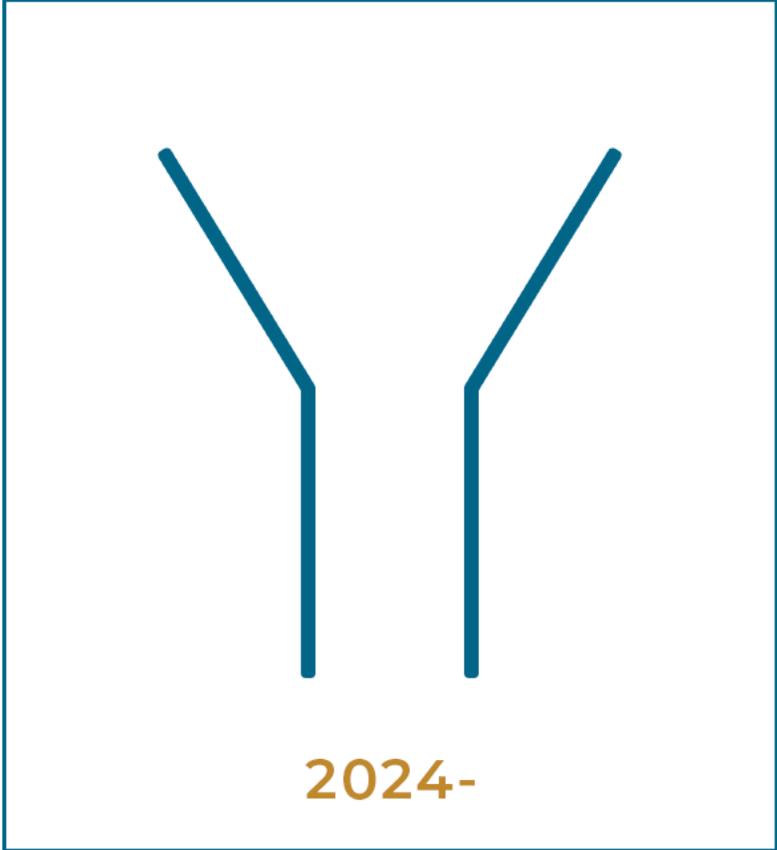
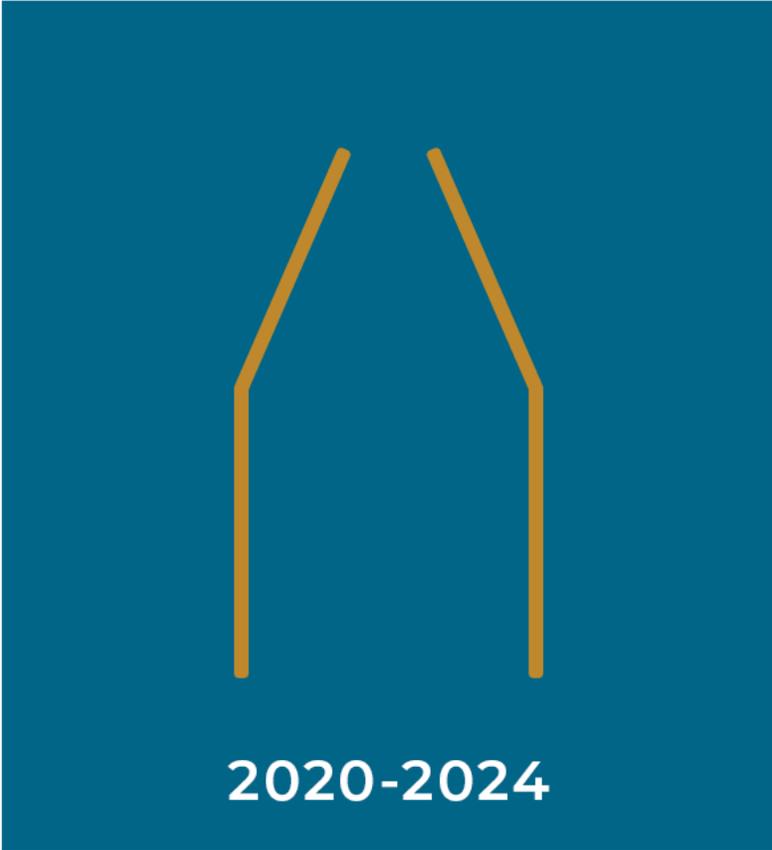
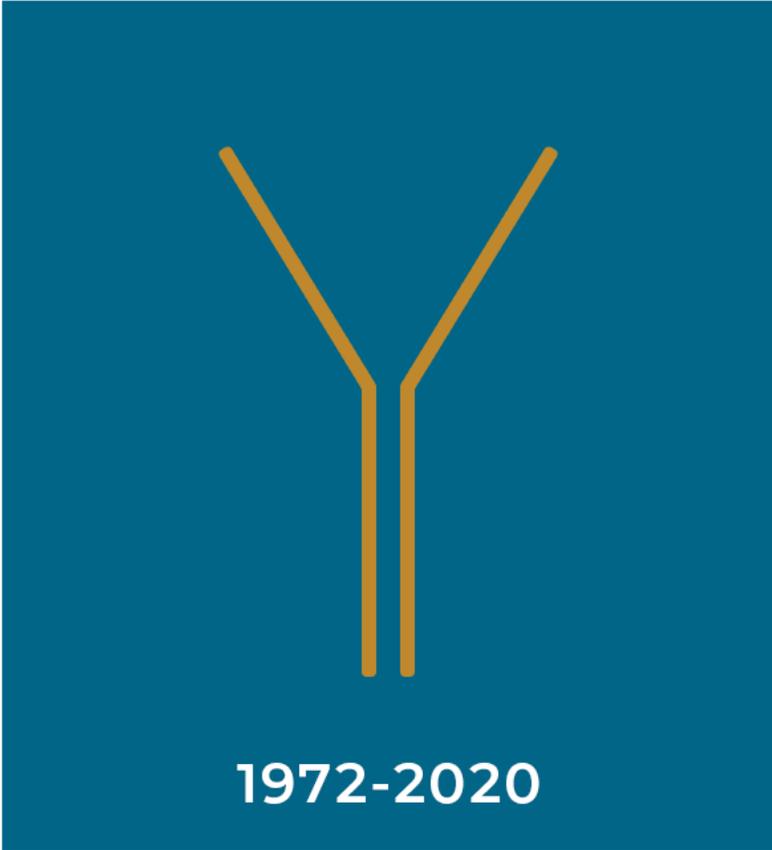
- Similar timeframe from publication to implementation
- Last time: May 2020, pandemic
- Where are we now?
- How big are these changes?
- Consistency with past guidance, including 2020
- Discretion, based on the actual facts before you



Where's Waldo Gathering

# BIG PICTURE: SHIFTING THE TIX FUNNEL SHAPE

Top of Funnel: Access to TIX Policy  
Bottom of Funnel: Process Due



# FIRST THINGS FIRST – WHAT IS THIS ABOUT?

Creates framework to respond to sex discrimination other than sexual harassment

Consistent with previous regs and guidance in many ways, including pregnancy discrimination

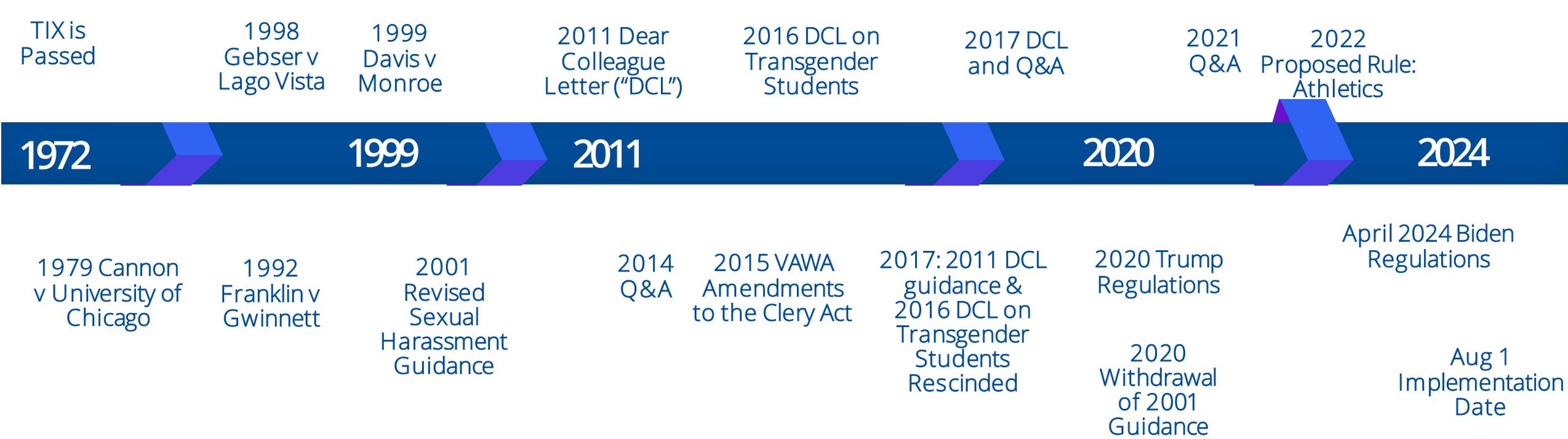
Not strictly limited by geography; impact matters

Expands employee reporting obligations

Requires prompt and effective action to end sex discrimination and prevent its recurrence

# The History of Title IX

## A Timeline



# DEFINITIONS – WHAT IS SEX DISCRIMINATION?

- **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.
- Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*
  - Hostile environment sexual harassment
  - Quid Pro Quo
  - Specific Offenses (VAWA)

# HOSTILE ENVIRONMENT SEX-BASED HARASSMENT HAS 5 COMPONENTS

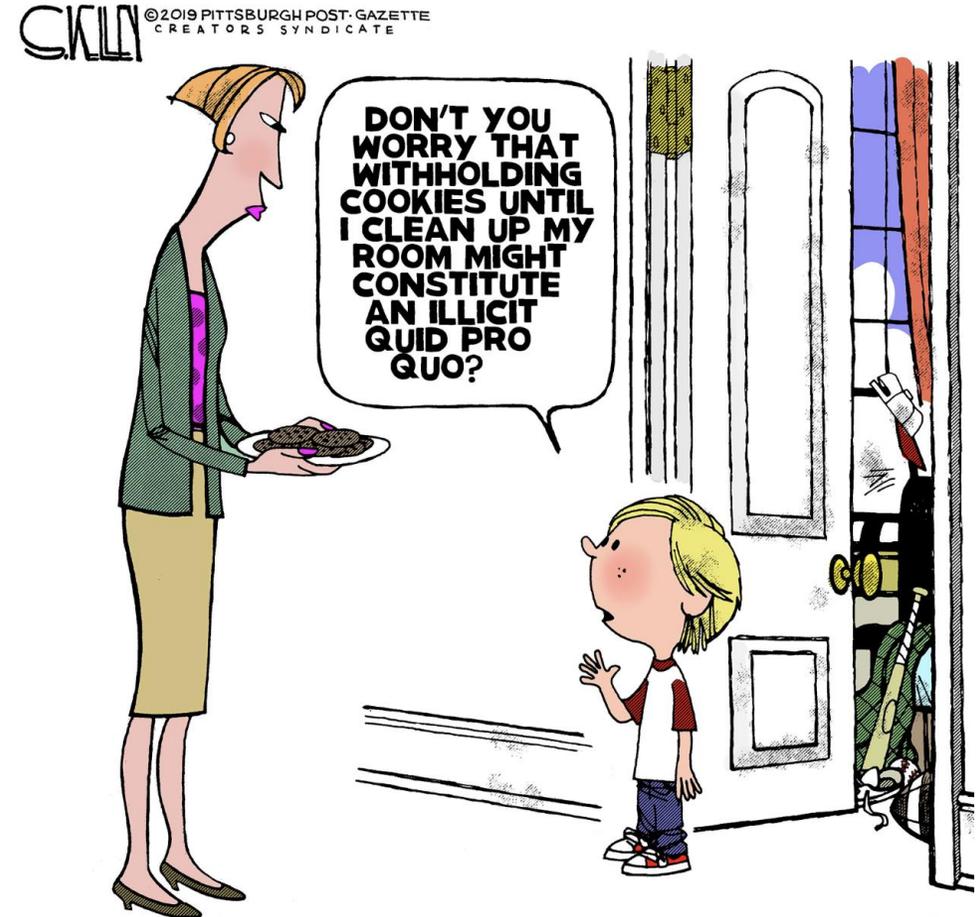
- The conduct is
- (1) unwelcome,
- (2) sex-based,
- (3) subjectively and objectively offensive, and
- (4) so severe or pervasive
- (5) that it results in a limitation of or denial of a person's ability to participate in or benefit from the education program or activity.

**Must have all 5 above!**



# QUID PRO QUO

- Some updates here
- Not just employees, also agents or other persons authorized by the recipient to provide an aid, benefit, or service under the program or activity
- Students???
- Maybe, fact-specific
- Preamble discussion of unwelcome—consider consensual relationship policies



# DEFINITION OF A COMPLAINT

2020

Signed Formal Complaint Required



2024

- No "magic words"
- Oral or written
- "Objectively understood" by a reasonable person as a request to investigate
- But, informal process can begin before a complaint (after a disclosure)

§ 106.2

# INFORMAL RESOLUTION CHANGE

## **2020 regulations:**

1. Do not offer to resolve allegations via IR without a formal complaint; and,
2. Never resolve an allegation that an employee sexually harassed a student via IR.

## **Final 2024 regulations:**

1. No complaint required before starting IR; and,
2. Do not offer IR if the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or such a process would conflict with Federal, State or local law.

# LGBTQIA+

- Preamble:
  - *Price Waterhouse/Oncale/Bostock* and Title VII → Title IX Regulations
  - Sex stereotypes → to treat differently on basis of sexual orientation/gender identity *is* to discriminate on the basis of sex
  - *“Indeed, Bostock’s reasoning dictates that, even assuming that 'sex' refers to 'biological distinctions between male and female,' discrimination against a person because they are gay or transgender is, in part, discrimination on the basis of sex.”*
- § 106.10: “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.”

# PREGNANCY



# PREGNANCY: NOT NECESSARILY NEW, BUT CLARIFIED

§ 106.40

- Depending on state law, not necessarily new, but clarified
- More people will find new for students
- Reasonable Modifications
- Voluntary leaves or separate but comparable programs
- Lactation spaces
- Comparable treatment to other medical conditions



# NOTICE AND REQUIRED RESPONSE

§ 106.40

When a student\* informs any employee of the student's pregnancy or related conditions...the employee promptly:

- (1) provides the Title IX Coordinator's contact information and
- (2) informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access....



# PRIVACY OF PREGNANCY



## *Preamble*

- Dobbs is not about equal access to education or employment.
- A policy or action that specifically targets individuals who have received abortion care for adverse treatment may be discrimination.
- Regs require action when a person “informs” an employee of a student’s pregnancy or related conditions. “The requirement that the employee act only when directly informed in this manner balances a student’s interest in privacy and autonomy with the necessity of preventing or eliminating sex discrimination in a recipient’s education program or activity.”

# OTHER THEMES TO NOTE

- Don't sleep on VAWA
- Examples in the Preamble
- Fewer footnotes
- Making the language and information more accessible



# DEFINITION OF A COMPLAINANT? STUDENT?

- Student is broad - "Admitted"
- A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, or
- A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX **and** who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.



§ 106.2

# DOES LOCATION/PARTICIPATION MATTER?

Hostile Environment Sex-Based Harassment:

- Less about *where* (some of the) conduct occurred
- More about the impact in the program or activity
- OK if includes considering conduct that occurred elsewhere, outside P&A, online, even outside the US

Complainant definition:

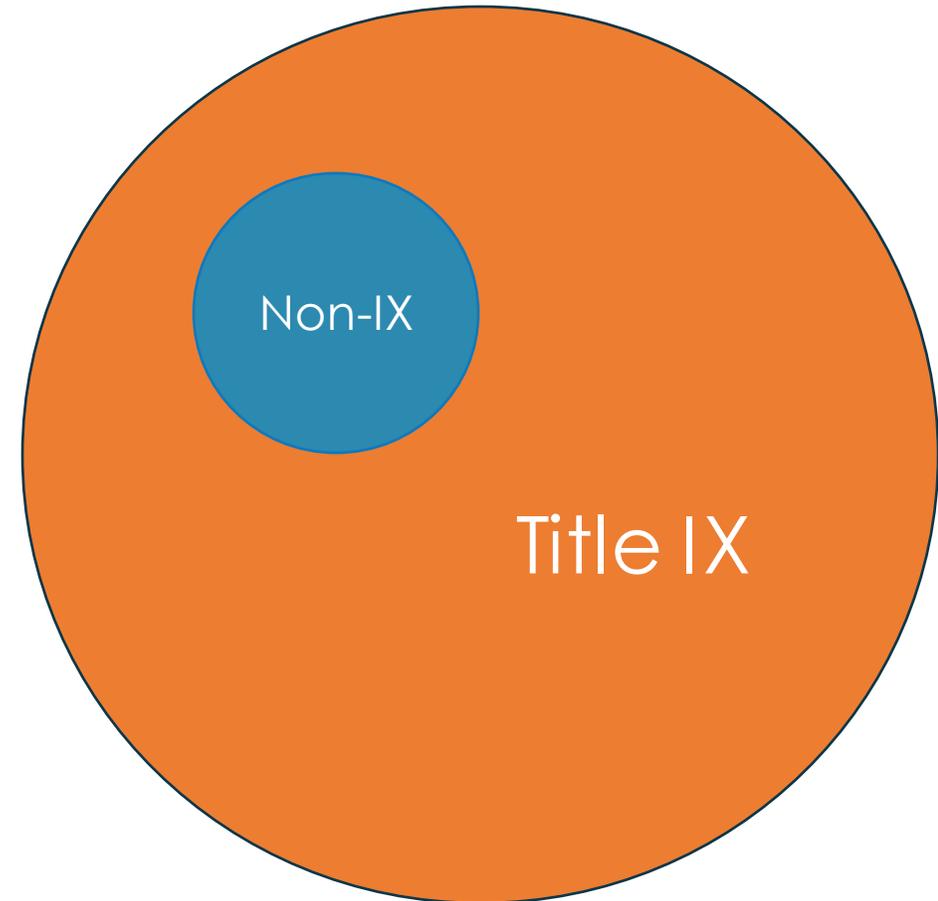
- Not about whether person is participating in the P&A when they make their complaint.
- Yes about whether the conduct occurred in the P&A (for non-students, non-employees)

# THE TWO TRACK POLICIES ARE DEAD; LONG LIVE THE TWO TRACK POLICIES!

2020



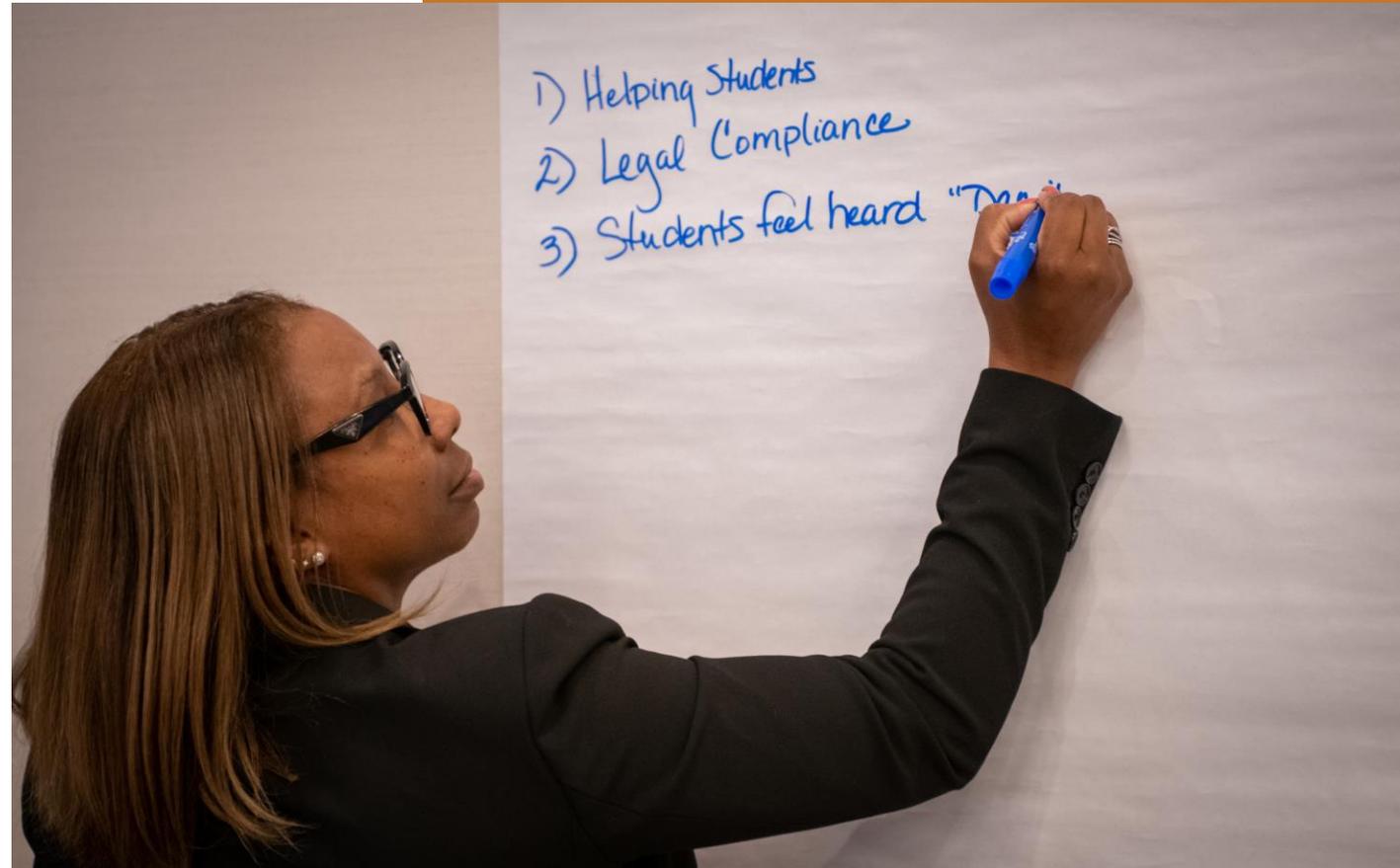
2024



# 106.45; +106.46 ELEMENTS IF APPLICABLE

- 106.46 is the process for adjudicating any sex-based harassment complaint in which a **postsecondary** student is either a complainant or a respondent
- 106.45 is for everything else (under Title IX)
- Must "articulate consistent principles" for why different procedures will apply to resolving some, but not all, complaints
  - Type of violation
  - Status of party
  - Potential sanction

# ROLE OF THE COORDINATOR



- 1) Helping Students
- 2) Legal Compliance
- 3) Students feel heard "Dm"

# NOW IT IS THIS: NOTIFICATION REQUIREMENTS UNDER 106.44(C)(2)

DOES AN EMPLOYEE HAVE TO TAKE ANY ACTION BECAUSE OF WHAT THEY LEARNED ABOUT CONDUCT THAT MAY CONSTITUTE SEX DISCRIMINATION UNDER TIX TO THE TIXC?  
(FOR POSTSECONDARY)

IS THE EMPLOYEE CONFIDENTIAL? EITHER BECAUSE OF THEIR JOB DUTIES, OR...

YES, no reporting is required.

IF NO, does the employee have either (1) the authority to institute corrective measures, or (2) responsibility for administrative leadership, teaching, or advising? [Category 1]

IF YES, report to TIXC.

IF NO, TWO OPTIONS ARE PERMITTED:

1. Report to TIXC, or
2. Provide the TIXC's contact information and information about how to report sex discrimination to any person who provides the 'ee with the information about conduct that may constitute sex discrimination under TIX. [Category 2]

# RESPONDING AND NOTIFICATION

- **Category 1:** must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or the regulations.
- **Category 2:** must either (1) notify the Title IX Coordinator, or (2) provide the contact information about the Title IX coordinator **and** state that the Title IX Coordinator will provide information about the grievance procedures, supportive measures, and how to make a complaint of sex discrimination.

# CONFIDENTIAL EMPLOYEES

While not in the Regulations, beware the dangers of designating anyone who is not privileged as being a confidential employee.

Don't do it.

Seriously.



# UPDATED TRAINING REQUIREMENTS

- All employees – not merely offered.
- Additional topics for those implementing grievance procedures, specific to their roles.
- Annually
- No required training for students (who aren't also employees); but VAWA!



# TRAINING

2020

- One time
- Coordinators, investigators, decisionmaker, informal resolutions
- Core TIX Response
- Offer training?

2024

- Annual
- Coordinators, investigators, decisionmaker, informal resolutions, appeals, second look
- All employees (but different)
- Complete training!
- (more) consistent with VAWA

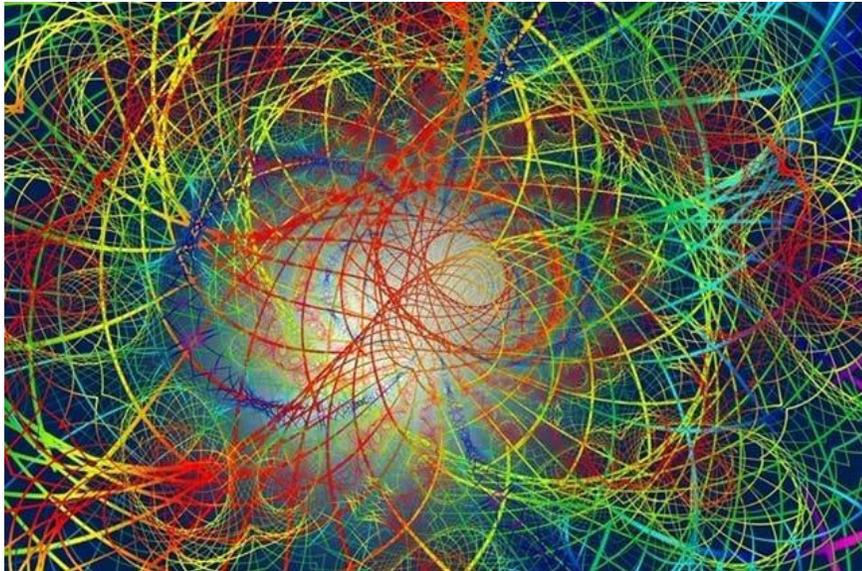
# MAKE AVAILABLE V. ACTUALLY TRAINED

- All employees – not merely offered.

*“The Department appreciates the opportunity to clarify that § 106.8(d) **requires a recipient to train all employees, as opposed to just making training available.** While the Department recognizes that some commenters may find this burdensome, the requirement to train all employees serves the important purpose of ensuring that all employees understand their role in the recipient’s compliance with its Title IX obligations and understand their responsibilities when they obtain information about conduct that may reasonably constitute sex discrimination under Title IX.” 33550*

# CORE RESPONSE TRAINING

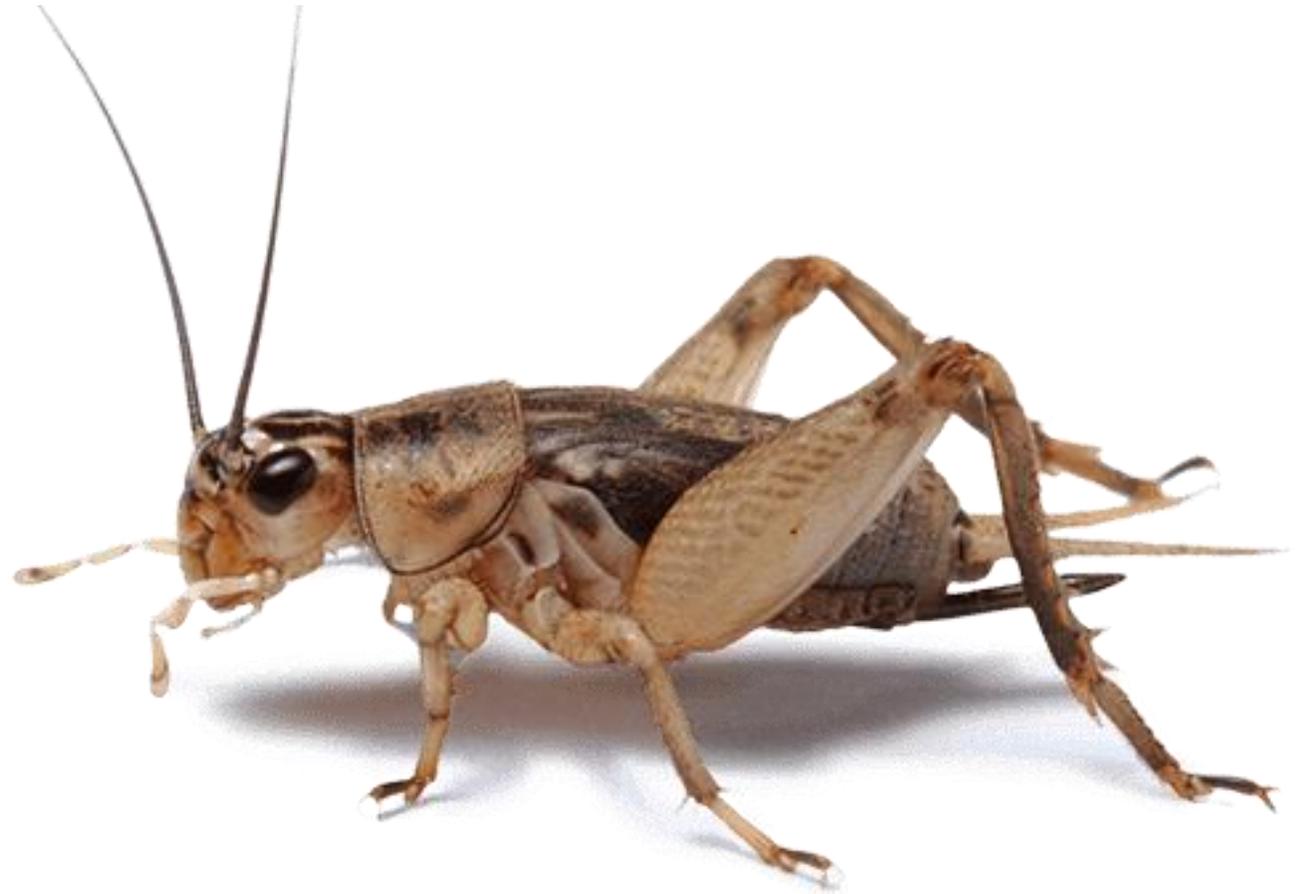
1. Title IX Coordinators
2. Title IX Investigators
3. Title IX Decisionmakers
4. Title IX Appeals Officers
5. Title IX Informal Resolution Officers
6. Title IX Second Look Personnel



- Obligation to address sex discrimination in P&A (1, 2, 3, 4, 5, 6)
- Scope of Violative Conduct (1, 2, 3, 4, 5, 6)
- How to conduct Informal (1, 5)
- How to serve impartially (1, 2, 3, 4, 5, 6)
- Specific Position Responsibilities (1, 2, 3, 4, 6)
- Recordkeeping (1)
- Any other training necessary (1)
- Notification and information requirements (1, 2, 3, 4, 6)
- 106.45 and 106.46 procedures (1, 2, 3, 4, 6)
- Relevant meaning (1, 2, 3, 4, 6)

# STUDENT FACING TRAINING?

- What do the new Title IX Regulations require that we train students on?



# BUT...DON'T SLEEP ON VAWA TRAINING: PREVENTION



Education programs shall include “primary prevention and awareness programs for all incoming students and new employees,” which shall include:

- statement prohibiting domestic violence, dating violence, sexual assault, & stalking;
- definition of domestic violence, dating violence, sexual assault, & stalking in the applicable jurisdiction;
- definition of consent, in reference to sexual activity, in the applicable jurisdiction;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene in cases of a risk of domestic violence, dating violence, sexual assault, or stalking;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- ongoing prevention and awareness campaigns for students and faculty on all of the above (subject to regulations and ED guidance).

# SO LONG, FAREWELL, AUF WIEDERSEHEN

- No requirement to post training
- No return of the exclusionary rule (was in NPRM)
- No recordkeeping requirement relating to actions taken meet obligations under the sections relating to pregnancy
- No "mandatory dismissals"
- No formal complaints required – oral or written are ok
- Fewer barriers to informal resolution

See Ya Goodbye GIF By The Rodgers &  
Hammerstein Organization

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

# LITIGATION

STATE OF TEXAS,

*Plaintiff,*

v.

THE UNITED STATES OF AMERICA;  
MIGUEL CARDONA, in his official  
capacity as Secretary of Education;  
UNITED STATES DEPARTMENT OF  
EDUCATION; CATHERINE LHAMON, in  
her official capacity as Assistant Secretary  
for Civil Rights, Department of Education;  
RANDOLPH WILLS, in his official capacity  
as Deputy Assistant Secretary for  
Enforcement, Department of Education,

*Defendants.*

No. \_\_\_\_\_

---

**State of Texas's Original Complaint**

---

1. Through an exercise in notice-and-comment rulemaking ordered by President Biden, the U.S. Department of Education has attempted to effect radical social

April 29, 2024

Lawsuits filed by a number of states and organizations, mostly centered around coverage of sexual orientation and gender identity

# PROCESS AND PRACTICE CHECK-UP

- "Articulate" what grievance procedures apply based on consistent principles.
- Clarify rules around privacy, confidentiality, FERPA, and "widespread disclosure."
- Consider updates in the roles of confidential resources, advisors, and support persons.
- Revisit your resolution frameworks, including timeframes for major steps, grounds for delay, evidence-sharing practices and use of recording/transcription, evidentiary rules, and hearing guidance and scripts.
- Remember what ED says about plain language...

# ACTION PLAN

Message to your  
community

Activate your  
stakeholder teams

Identify groups to be  
trained

Prepare timeline

Review and revise  
policies and  
procedures

Ensure people are  
trained

# THE RIVER CONNECT

THE RIVER CONNECT is a virtual community of experts and colleagues gathered together to help each other process the complexities of the work.



A place to

*communicate*  
*share*  
*educate*  
*learn*

for HIGHER EDUCATION  
PROFESSIONALS working in  
**Title IX, Equity & Clery**





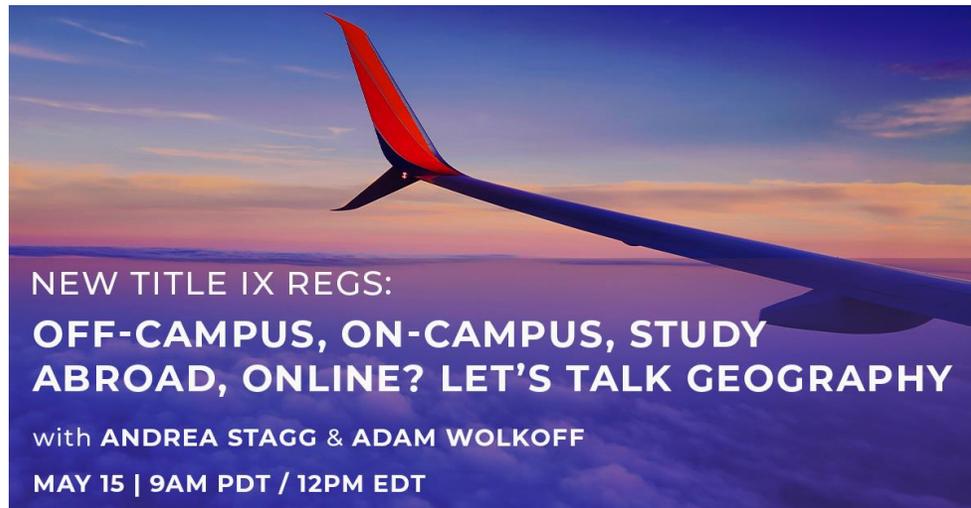
NEW TITLE IX REGS:  
**EMPLOYEE  
REPORTING  
OBLIGATIONS**  
with **ANDREA STAGG**

APR 30 | 9AM PDT / 12PM EDT



**BEYOND SEXUAL  
HARASSMENT:  
CONDUCT COVERED  
BY THE 2024  
TITLE IX REGULATIONS**  
with **ANDREA STAGG &  
ADAM WOLKOFF**

MAY 6 | 12PM PDT / 3PM EDT



NEW TITLE IX REGS:  
**OFF-CAMPUS, ON-CAMPUS, STUDY  
ABROAD, ONLINE? LET'S TALK GEOGRAPHY**  
with **ANDREA STAGG & ADAM WOLKOFF**

MAY 15 | 9AM PDT / 12PM EDT



NEW TITLE IX REGS:  
**UPDATES TO TRAINING REQUIREMENTS**  
with **ANDREA STAGG & JOSEPH STORCH**

MAY 23 | 8AM PDT / 11AM EDT

An aerial photograph of a university campus during autumn. The scene is dominated by trees with vibrant yellow and orange leaves. In the center, a tall, dark brick clock tower with a white cupola and a golden dome stands prominently. To the left, a large, multi-story brick building is visible. The foreground shows a paved area with several cars parked. The sky is clear and blue.

# Utilize Direct Pay ITC

Enable your sustainability and campus improvement goals

Presented by Kevin DeLeon

Life Is On

**Schneider**  
Electric

# Agenda

- How do we enable our clients?
- What are Investment Tax Credits?
- Understanding the Impact of Solar
- Solar Options
- How does it work?
- Questions



# Industry Leader



Global research firm, **Guidehouse Insights** ranked Schneider Electric:

- #1 Energy Service Company - 2017 to 2023
- #1 Microgrid Integrator - 2023
- #1 Intelligent Building Software - 2020
- #2 Energy-as-a Service Provider - 2022

## Trusted Partner



Corporate Knights ranked Schneider the #1 most sustainable company in the world



2023 World's Most Ethical Company Designation



2023 Time Magazine's 100 Most Influential Companies



Schneider has been recognized by the EPA as an Energy Star Partner of the year for more than a decade

Life Is On

**Schneider**  
Electric

# Potential Project Funding Sources

## Energy and Efficiency Savings

- Energy Savings
- Streamline Operations

## Options

State Master Lease Program

3<sup>rd</sup> Party Finance

## Capital

Reserve Funds

## Grants/Tax Credits

- ITC
- 179D Tax Deduction
- SRECs

# TAX CREDITS

## ITC Credits

Direct Pay

## SRECS

15-20 year  
Impact

## 179D

Energy  
Efficiencies

## ITC – Investment Tax Credit

- Established on 2005, Solar Investment Tax Credit (ITC)The investment tax credit
- Inflation Reduction Act (IRA) become law in 2022
  - Included key provisions
    - Extending the Solar ITC through 2034
    - Added a “Direct Pay” for tax-exempt entities



Life Is On

**Schneider**  
Electric

# How Does the ITC Work?

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Credit Prior to IRA	26%	22%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Credit Under IRA	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%	26%	22%	0%

- A 30% federal tax credit claimed against the tax liability of **investors in solar energy property**.
- A tax credit is a dollar-for-dollar reduction in the income taxes that a person/entity would otherwise pay to the US government.
- Based on the amount of investment in solar property.
- Tax-exempt entities generally do not have a tax liability against which a tax credit can be used as an offset, they are now allowed to receive a cash payment of certain energy tax credits, including the solar ITC.



## Who's Eligible?

A wide range of tax-exempt entities, including:

- Public Universities
- States
- School Districts
- Hospitals
- Organizations that are exempt via § 501(a)

Life Is On

**Schneider**  
Electric

# What is the Process



## Identify Project

Identify solar scope of work that's right for you. Project costs are paid upfront.



## Pre-Filing Registration

Tax exempt entities need to register with the IRS once project is placed into service



## 3<sup>rd</sup> Party Verification

A Segregation Study is used to substantiate tax credit requests



## File Tax Return

Using IRS form 990. Tax exempt entities will file a tax return by November 15<sup>th</sup> (for June 30 fiscal year)



## IRS Evaluation and Award

IRS treat these tax credits as an overpayment, and will refund the overpayments. Payment not made until at least after the filing deadline has past.

# How Do I Apply

- Fill out an IRS registration form for the Direct Pay Credit
  - Provide information about your organization
- After pre-filing you will get a required registration number, prior to filing your taxes
- **You must start the project and ensure it begins generating energy in the same tax year you apply for the Direct Pay**
  - If the project ends up being in service in a different year than your original pre-filing, you must re-submit pre-filing for the year you claim a direct Pay
- Lastly, you must file your taxes





## Bonus Credits

- Base Credit – 30%
  - Over 1MW / prevailing wage and apprenticeship requirement
- Low Income Bonus – 10%
- Domestic Content – 10%
  - 100% domestic steel/iron
  - 40% domestically manufactured products
- Energy Community – 10%
  - Mapping Tool
- May be reduced by 15% if tax exempt financing are used

# Solar Renewable Energy Credits (SRECs)

- **An SREC is a financial tool at the state level that allows you to earn money for electricity your solar panels generate.**
- You can earn 1 SREC for every MWh of electricity you generate.
- **SRECs can be bought and sold to transfer the right to count the solar electricity.**
- If you live in a state with an SREC market (each state with a market has different rules) you'll most likely work with a broker to monetize your SRECs.
- In some states the SREC value will fluctuate, much like the stock market does.
- Annual cashflow that makes solar direct purchase more affordable, might also help pay for other deferred maintenance you might have.

# 179D Tax Deduction

Eligible projects include:

-  Interior Lighting
-  HVAC and Domestic Hot Water
-  Building Envelope
-  Other Energy Efficiency Measures

- 179D is a tax deduction that provides incentives for the construction or renovation of commercial buildings that meet certain energy efficiency standards.
- **In 2023 the maximum incentive was increased from \$1.88/sf to \$5.36/sf**
- This powerful financial tool can help you significantly offset the cost of energy efficiency and modernization projects.
- Tax exempt entities are not able to take this deduction as they do not have a tax liability, the deduction can only be taken by the entity primarily responsible for the system's design and construction.

# A Great Way to Jumpstart a Project!

The ability to secure this tax deduction relies on detailed engineering analysis in accordance with IRS guidelines.

Our team of professionals will work with you to:

- **Audit Recently Completed Projects:** We will work with you to determine which recent facility improvements might qualify for the tax deduction, and how those funds can be applied to a future improvement project with Schneider Electric.
- **Provide Eligible Project Options:** We will partner with you to identify your future modernization needs and opportunities.

## Richland County School District One, South Carolina

Schneider Electric helped Richland fund \$10.5M in classroom modernizations, efficiency, and sustainability upgrades including \$1.6M from a 179D tax incentive in 2023.



## Understanding The Impact of Solar

- Solar can make a major impact on projects
- Taking advantage of ITCs will help fund DM needs
- Solar Energy Renewable Credits (SRECS)
- PPA vs Direct Pay
- Sustainability Goals

## Things to Consider

### Solar Locations

- Rooftop
- Ground
- Parking

### Timing

- IGA Development
- Tax Credits

### Project Capacity

- Effect on Deferred Maintenance
- Sustainability Goals
- Operational Implications
- SRECS – 15-20 years

# On-Site Solar PV Options

Comparing and contrasting solar procurement structures

## DIRECT PURCHASE

### Benefits

- Leverage savings into ESPC project to maximize impact on deferred maintenance list
- Can take federal tax benefits directly
- Full control over the project: design, operation and risks
- SRES – 15 year cashflow to fund

### Challenges

- Requires use of own capital (or debt)
- All financial and operational risks over the life of the system is owned

## PPA

### Benefits

- No/low upfront capital
- Predetermined electricity price for 10-15 years
- No O&M responsibilities

### Challenges

- The process of negotiating a PPA can be lengthy
- Ownership may change hands
- More difficult in the case of roof leaks
- Does not impact progress on deferred maintenance list
- 3<sup>rd</sup> party monetizes any tax credits, and renewable energy credits

# O&M Comparison

Comparing and contrasting solar O&M

## DIRECT PURCHASE

- O&M contract paid & managed by SE or customer with assistance from SE (included in project budget)
- Customer can change O&M providers over time
- Roof Maintenance:
  - Customer can repair roofs as they choose.
  - Can utilize any qualified electrician for relocating panels if necessary
  - No “lost production” payments during downtime

## PPA

- O&M contract paid & managed by PPA provider
- Roof Maintenance:
  - Customer must coordinate roof repairs with PPA owner (roof is leased)
  - Often, only PPA provider can move panels if necessary
  - System downtime limited by PPA provider
    - Customer may have to pay “lost production”

# Comparing Today's Options

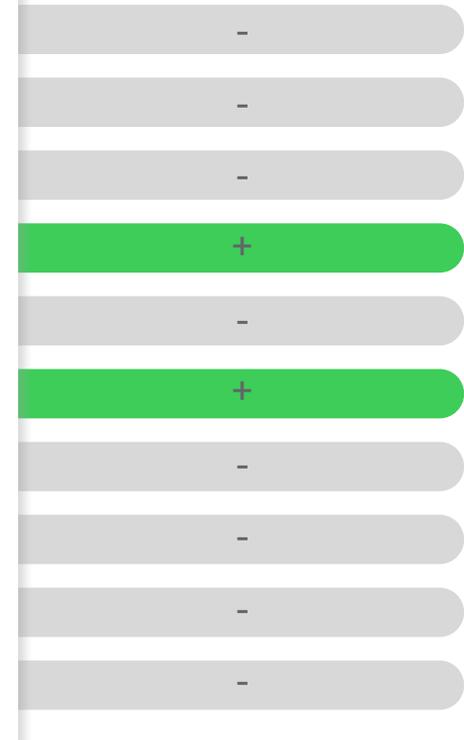
## Direct Purchased



## Consideration

- Cost of capital
- Contractual ease
- Monetization of Credits
- Depreciation
- Ongoing Flexibility
- Ongoing Maintenance
- Maintenance with ESCO
- Guarantee of results
- Available to leverage annual savings
- End of Life flexibility

## Solar PPA



# QUESTIONS?

Life Is On



Kevin DeLeon – [kevin.deleon@se.com](mailto:kevin.deleon@se.com)



# Navigating the AI Frontier in Higher Education

Chris Ingeholm  
Technology Strategist

McKenzie Williams  
Account Executive

Jason Watson  
JourneyEd



# Navigating the AI Frontier in Higher Education

## Agenda

- Microsoft AI Overview
- Institutional AI Strategy
- Microsoft Copilot Overview
- Copilot in Action
- How to Get Started
- Q&A

**Microsoft Specialist Team**



Modern work



Business applications



Infrastructure



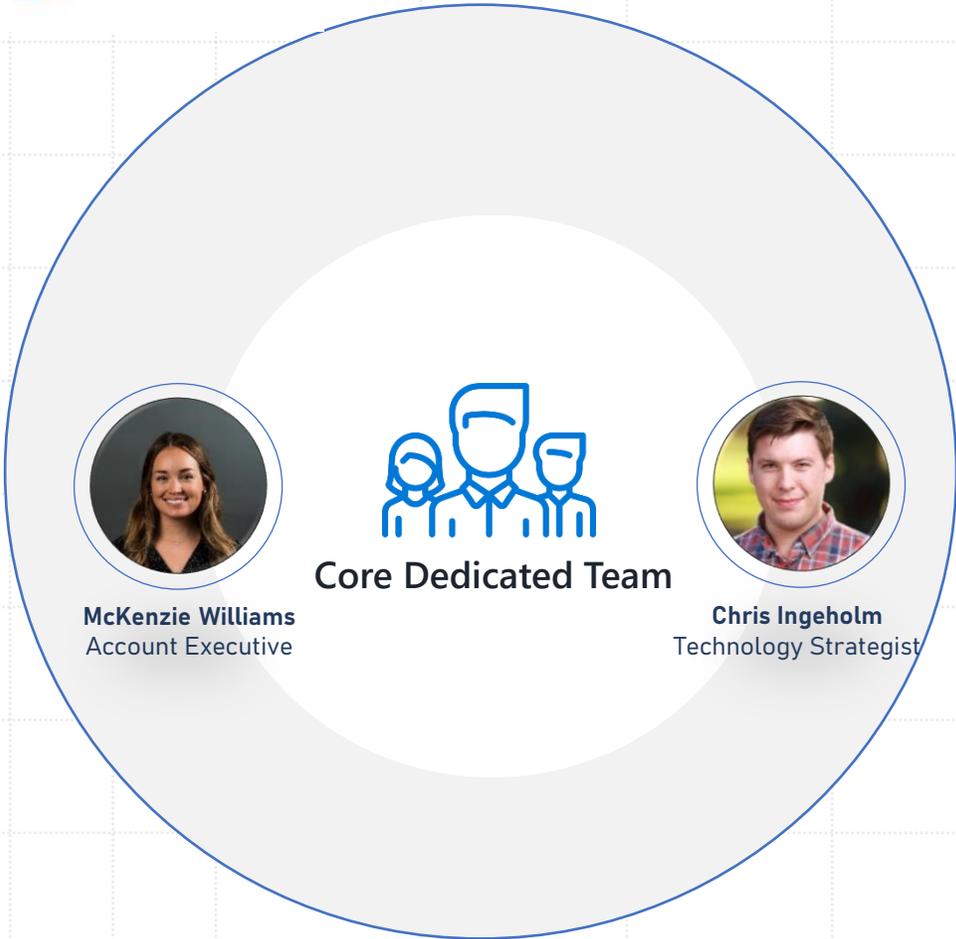
Digital and app innovation



Data & AI



Security



**Neav Abramov**  
Modern Work Specialist



**Penelope Sawyer**  
Biz Apps & Power Platform Specialist



**David Ulloa**  
Azure Infrastructure Specialist



**Mark Quicquel**  
App Innovation Specialist



**Rafa Salas**  
Data and AI Specialist



**Michael Brunetti**  
Cybersecurity Specialist



**Eric Davis**  
Surface Specialist



**Brianna Morris**  
Biz Apps & Power Platform Technical Specialist



**Todd Whitehurst**  
Azure Infrastructure Tech Specialist



**Charles Rice**  
App Innovation Tech Specialist



**Hope Foley**  
Data and AI Tech Specialist



**Cade Scherer**  
Cybersecurity Technical Specialist



**Jamie Bakert**  
US Education South Atlantic Director



**Francoise Adebayo**  
Commercial Executive



**Kevin Pugh**  
Unified Support Sales



**Tracy Woods**  
US Education Azure Director

“

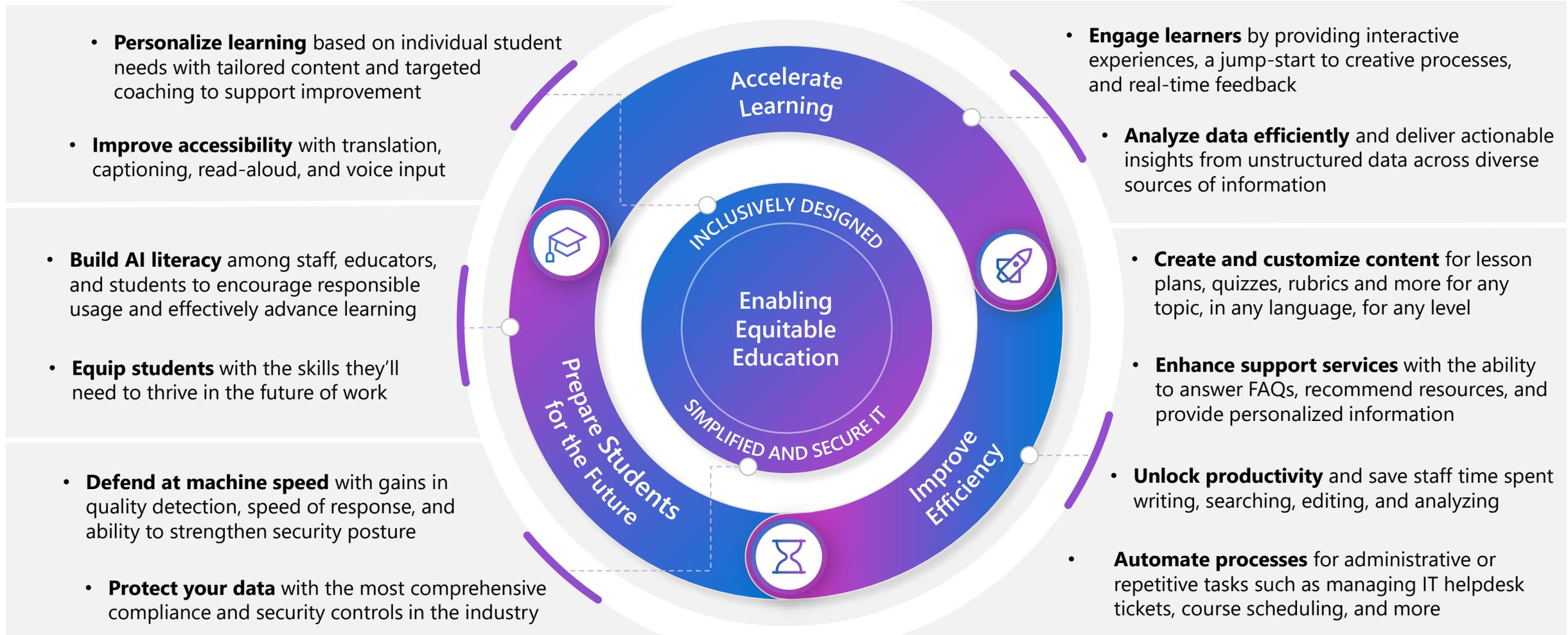
There is no better time to **reimagine education** and how technology can support that transformation.

— Satya Nadella

Chief Executive Officer  
Microsoft



# Opportunities for AI in Education



# Microsoft Responsible AI Standard

## Accountability

- A1:** Impact Assessment
- A2:** Oversight of significant adverse impacts
- A3:** Fit for purpose
- A4:** Data governance and management
- A5:** Human oversight and control

## Transparency

- T1:** System intelligibility for decision making
- T2:** Communication to stakeholders
- T3:** Disclosure of AI interaction

## Fairness

- F1:** Quality of service
- F2:** Allocation of resources and opportunities
- F3:** Minimization of stereotyping, demeaning, and erasing outputs

## Reliability & Safety

- RS1:** Reliability and safety guidance
- RS2:** Failures and remediations
- RS3:** Ongoing monitoring, feedback, and evaluation

## Privacy & Security

- PS1:** Privacy Standard compliance
- PS2:** Security Policy compliance

## Inclusiveness

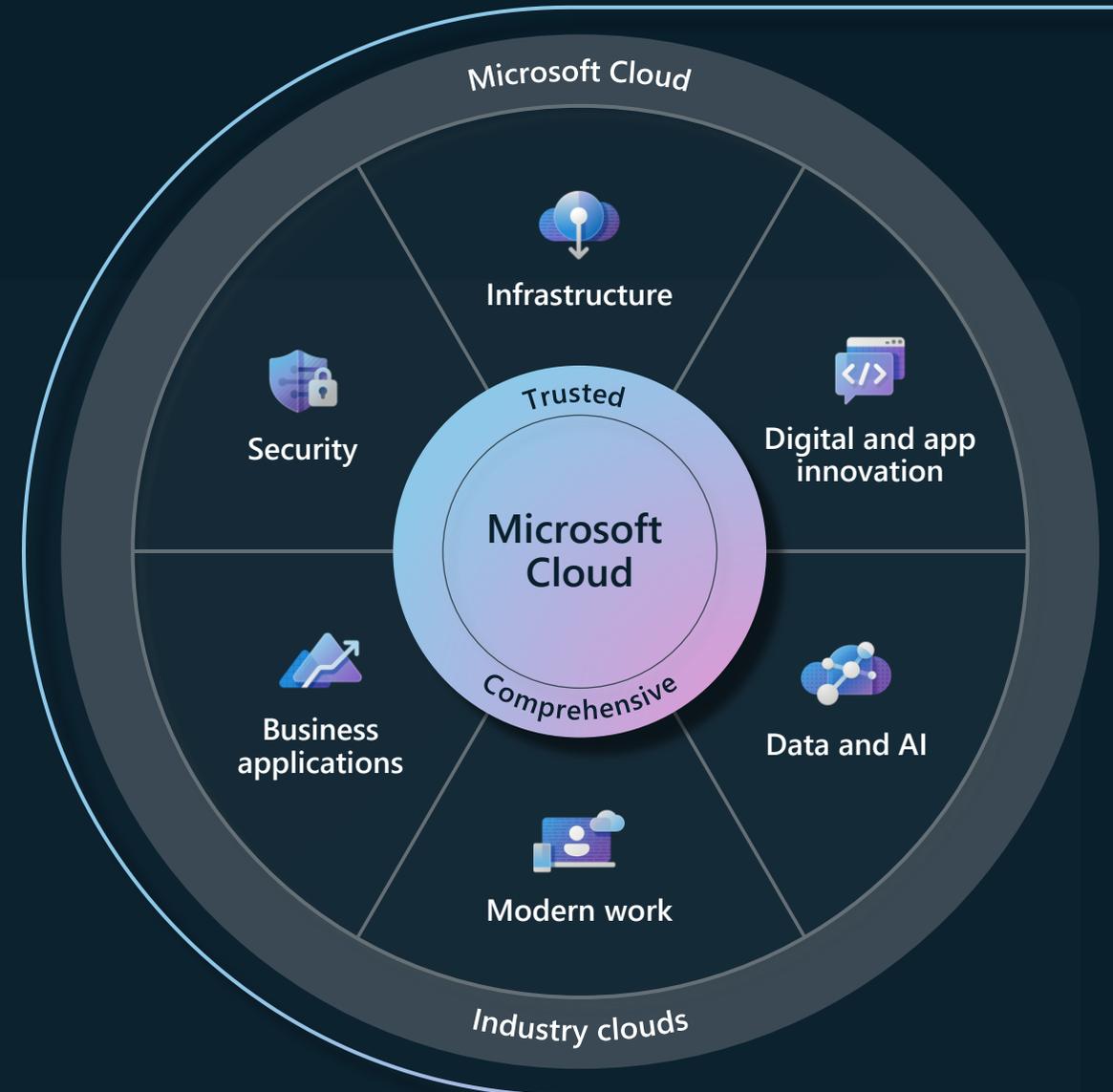
- I1:** Accessibility Standards compliance

# Enabling AI transformation

Unlock productivity across your business with Microsoft Copilot

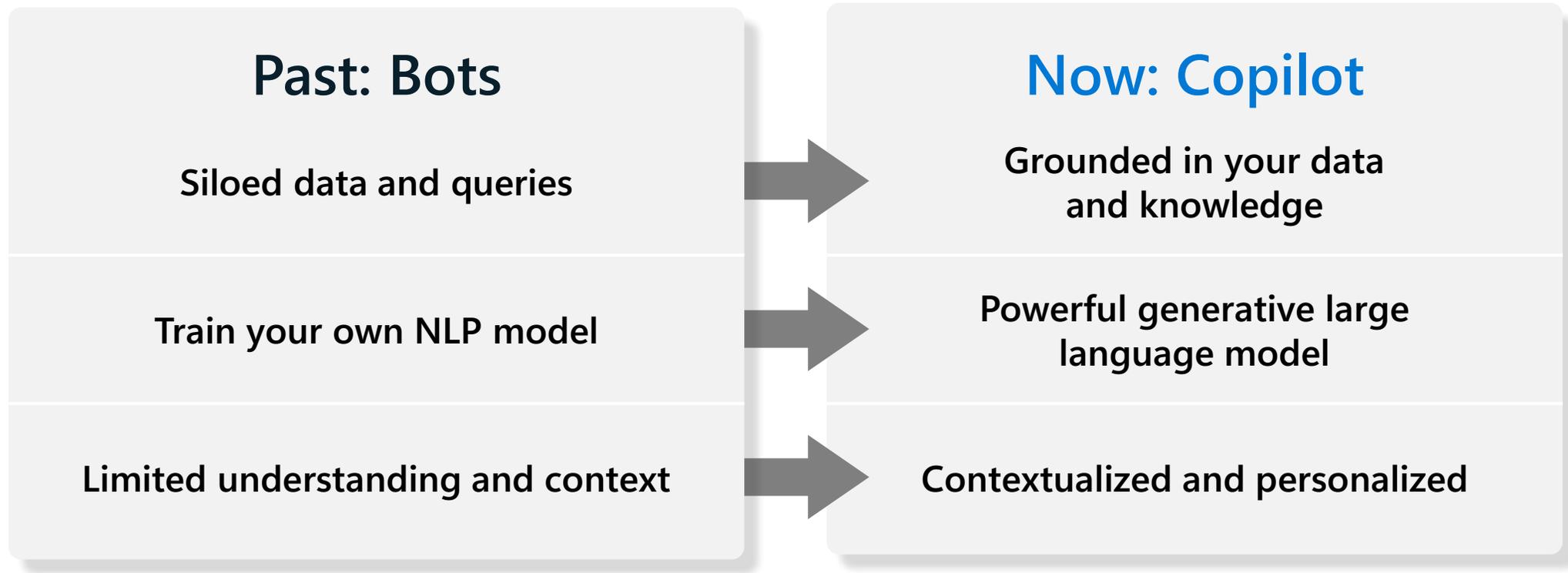
Build your AI capability with an open AI platform and partner ecosystem

Co-innovate with trust and safeguard your business



# Build an AI assistant to help

Copilot: Intelligent AI assistants that use **generative AI** and **large language models** to assist humans with **complex cognitive tasks**.



# Microsoft Generative AI Tools

Solution Offering	Use Scenario	IT Effort Required	
 <b>Microsoft Copilot (Enterprise)</b> Introduce AI to your Faculty and Staff	<ul style="list-style-type: none"><li>▪ Enable ChatGPT for your faculty and staff to generate content from internet sources</li></ul>		
 <b>M365 Copilot</b> Personal Productivity	<ul style="list-style-type: none"><li>▪ Enable ChatGPT for your faculty and staff to generate content from M365 data, right from Office</li></ul>		
 <b>Copilot Studio</b> Work with your data via a Low Code Experience	<ul style="list-style-type: none"><li>▪ Build copilots for enterprise scenarios using Low Code</li></ul>		
 <b>AI Studio</b> Build your own AI-powered copilots	<ul style="list-style-type: none"><li>▪ Enable a platform to create custom copilots trained on research and institutional data and other LLM's</li></ul>		

# Microsoft Copilot empowering your business

## Unlock Productivity across your organization

Persona	Copilot
 Knowledge Workers	Microsoft Copilot
	Copilot for Microsoft 365
	Copilot for Dynamics 365 Project Operations
	Copilot for Dynamics 365 Finance
	Copilot for Dynamics 365 Supply Chain
	Copilot in Microsoft Viva
	Copilot in Dynamics 365 Business Central
 Customer Service	Microsoft Copilot for Service
	Copilot in Dynamics 365 Customer Service
	Copilot in Dynamics 365 Field Service
 Sales	Copilot in Dynamics 365 Customer Insights
	Microsoft Copilot for Sales
 Data Professionals	Copilot in Dynamics 365 Sales
	Copilot in Microsoft Fabric
	Copilot in Power BI

## Build and extend your AI capabilities

Persona	Copilot
 IT Professionals	Microsoft Copilot for Azure
	Microsoft Copilot Studio
	Copilot in Power Apps
	Copilot in Power Automate
 Developers	Copilot in Power Pages
	GitHub Copilot
	GitHub Copilot X
	Build your own copilot with Azure AI Studio

## Safeguard your business

Persona	Copilot
 Security Analysts	Microsoft Copilot for Security

**Enterprise**



Bing Chat



Microsoft Copilot



Microsoft 365 Copilot

Personal

Work

Work

GPT Large Language Model



AI-Powered Web Search, Answers & Content Generation



Commercial Data Protection



Enterprise Security, Privacy & Compliance



Microsoft 365 Graph (content & context)

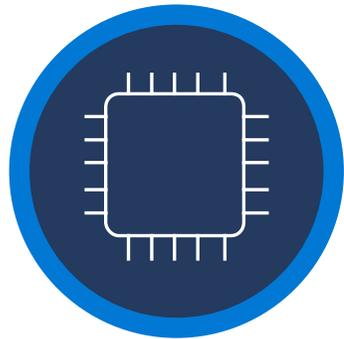


Microsoft 365 Apps



# Copilot as a Concept

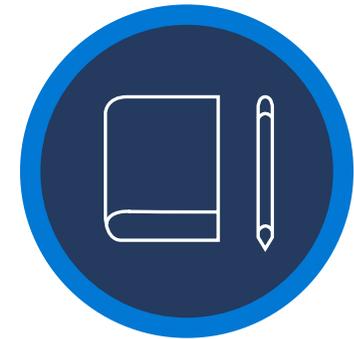
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**Copilot not  
Autopilot**



**User in the  
pilot seat**



**Embrace the  
Incomplete**

# Copilot Functions

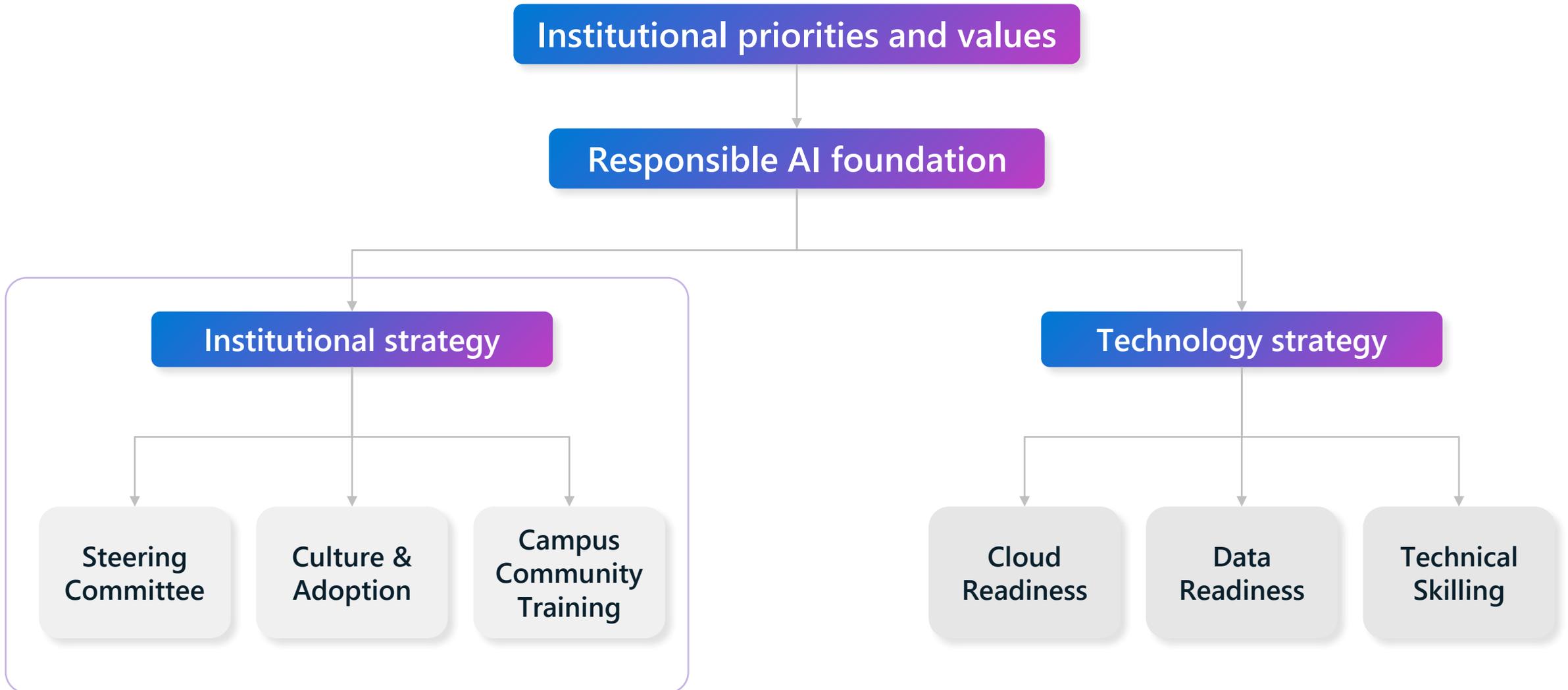
Personal Productivity

Role-based Productivity

Augment Business Processes



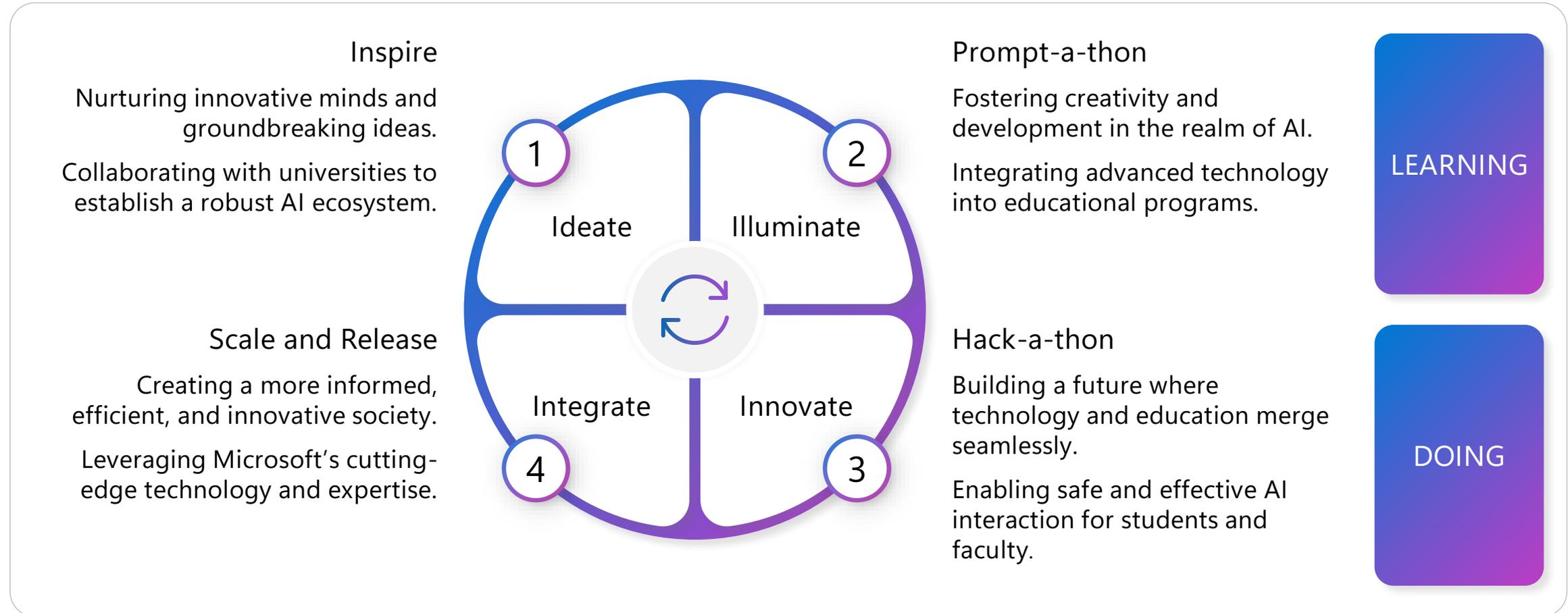
# Institutional priorities and values guide execution





# AI Adoption Framework

Early-adopter institutions have used this framework to **support progress on AI**. The framework for your institution may vary – the key is to take a multi-faceted approach.

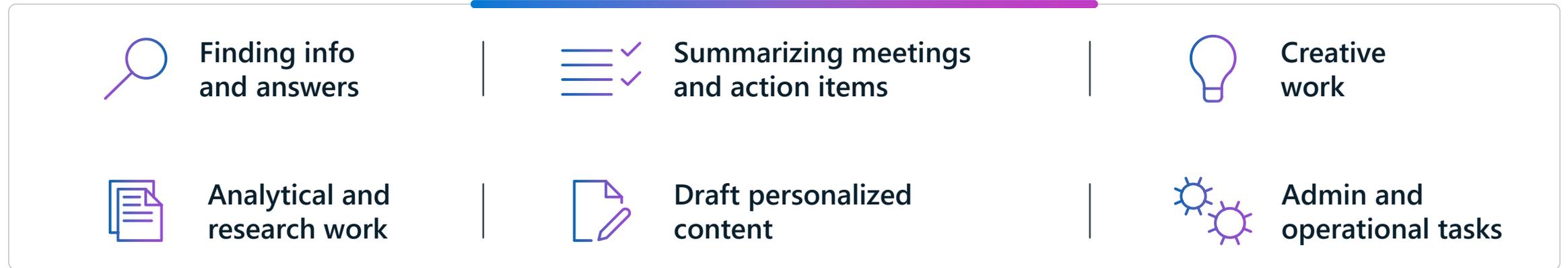




# AI technology strategy – baseline considerations

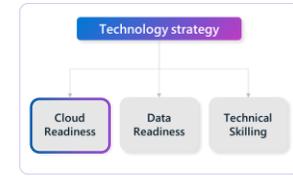
Key considerations include enterprise IT infrastructure and the right tools to democratize and accelerate AI use across campus.

## Tools to accelerate user productivity



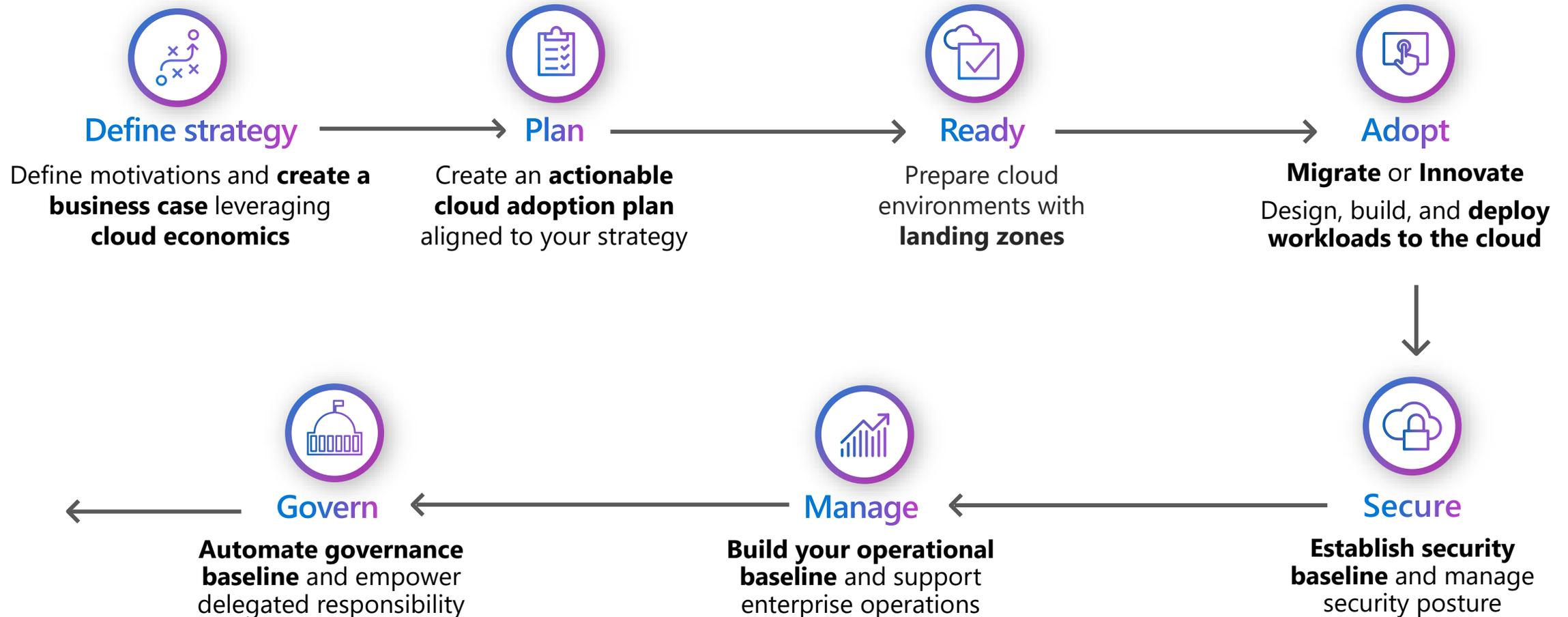
## Enterprise AI infrastructure



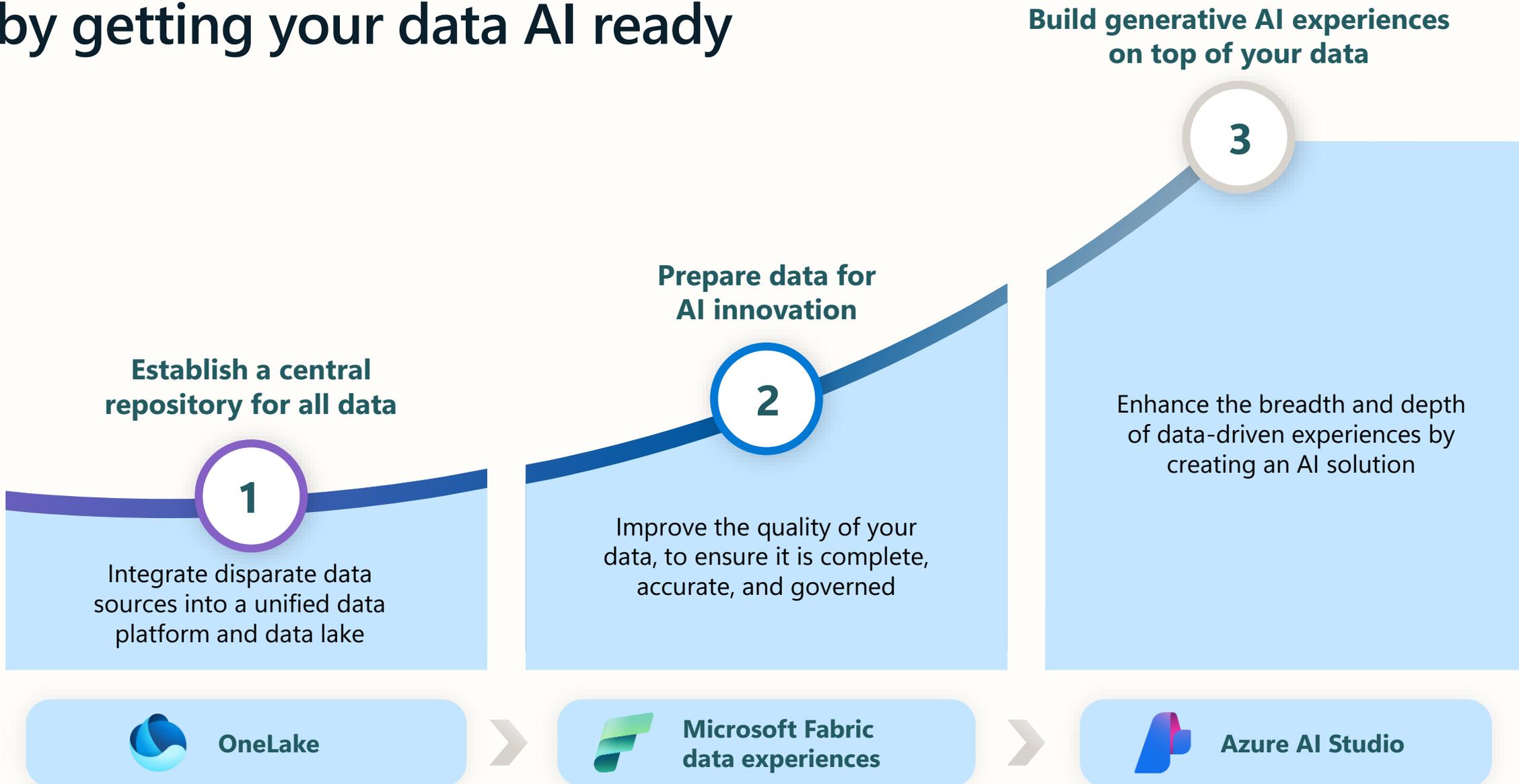


# Cloud adoption is the foundation for AI

Cloud readiness is fundamental to AI deployment. A well-designed cloud adoption approach ensures you can address technology requirements that are **pre-requisites for AI workloads**.



# Fuel your journey to AI innovation by getting your data AI ready





# What can AI do for **EDU**?



built AI tools that emphasize equity, accessibility, and privacy



helps staff search and brainstorm efficiently with Microsoft Copilot



works towards helping more students get to graduation



personalizes student engagement and brings meaning to data chaos



empowers instructors to easily streamline and create course content



uses Tutorbots to drive student outcomes

# Research Findings: Tutorbots Drive Student Outcomes

## Teaching CS50 with AI

Leveraging Generative Artificial Intelligence in Computer Science Education

Rongxin Liu  
Harvard University  
Cambridge, MA, USA  
rongxinliu@cs50.harvard.edu

Carter Zenke  
Harvard University  
Cambridge, MA, USA  
carter@cs50.harvard.edu

Charlie Liu  
Yale University  
New Haven, CT, USA  
charlie.liu@yale.edu

- “Absolutely unreal... felt like having a personal tutor.. I love how AI bots will answer questions without ego OR judgment....”
- 46% said “Absolutely Need. Only 6% said “could do without”



[Harvard:](#)  
[Teaching CS50 with AI \(harvard.edu\)](#)

## Math Education With Large Language Models: Peril or Promise?

Harsh Kumar\*  
University of Toronto  
Toronto, Canada  
harsh@cs.toronto.edu

David M. Rothschild  
Microsoft Research  
New York City, United States  
david@researchdmr.com

- Research: LLMs and education, **LLM-based explanations positively impacted learning** relative to seeing only correct answers
- The study also found that **pre-prompting LLMs to act as tutors with customized instructions also showed promise**
- *“GPT-4 explanations significantly improved performance on SAT math problems”*



[U Toronto:](#)  
[Math Education with LLM: Peril or Promise?](#)



# Copilot for Microsoft 365

## Prompt Like a Pro

Microsoft Digital

# FREE-FORM TEXT FIELD TIPS

## **Communicate clearly**

Correct punctuation, capitalization, and grammar produce better quality output.

## **Use quotes**

Use quotation marks to indicate the exact content you want Copilot to write, modify, or replace.

## **Sequence can matter**

The order in which you present information in your prompt may impact the output, so try resequencing or rephrasing if you aren't getting what you expect.

## **Use direct linking (Context IQ)**

To speed up and improve outputs, instead of asking Copilot to search for the relevant content, tell it exactly what it should use using the slash "/" command



## Microsoft 365 Copilot Writing a good prompt

<b>Goal</b>	+	<b>Context</b>	+	<b>Source</b>	+	<b>Expectations</b>
<i>What response do you want from Copilot?</i>		<i>Why do you need it and who is involved</i>		<i>Which information sources or samples should Copilot use?</i>		<i>Who should Copilot respond to best meet your expectations</i>
<hr/>		<hr/>		<hr/>		<hr/>
<i>"Generate 3-5 bullet points..."</i>		<i>"...to prepare me for a meeting with Client X to discuss their "Phase 3+" brand campaign."</i>		<i>"Focus on Email and Teams chats since June."</i>		<i>"Please use simple language so I can get up to speed quickly."</i>

# COPILOT BEST PRACTICES

## **Check your facts:**

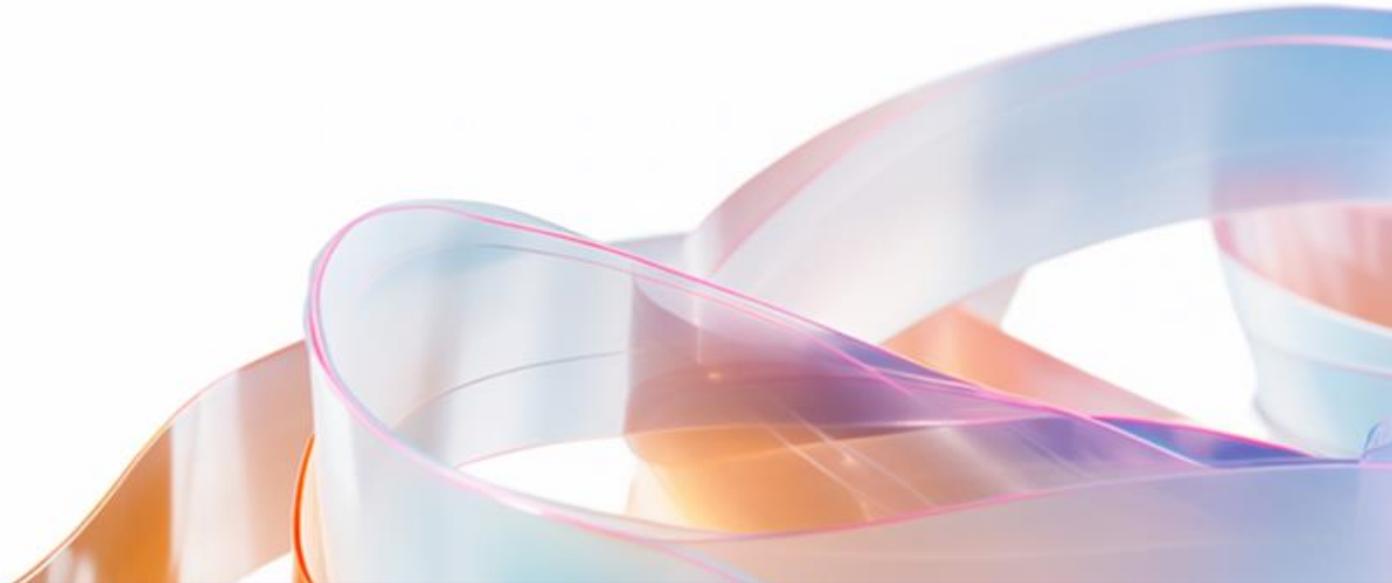
AI generated content may be sensitive or factually incorrect.

## **Keep, modify, or disregard:**

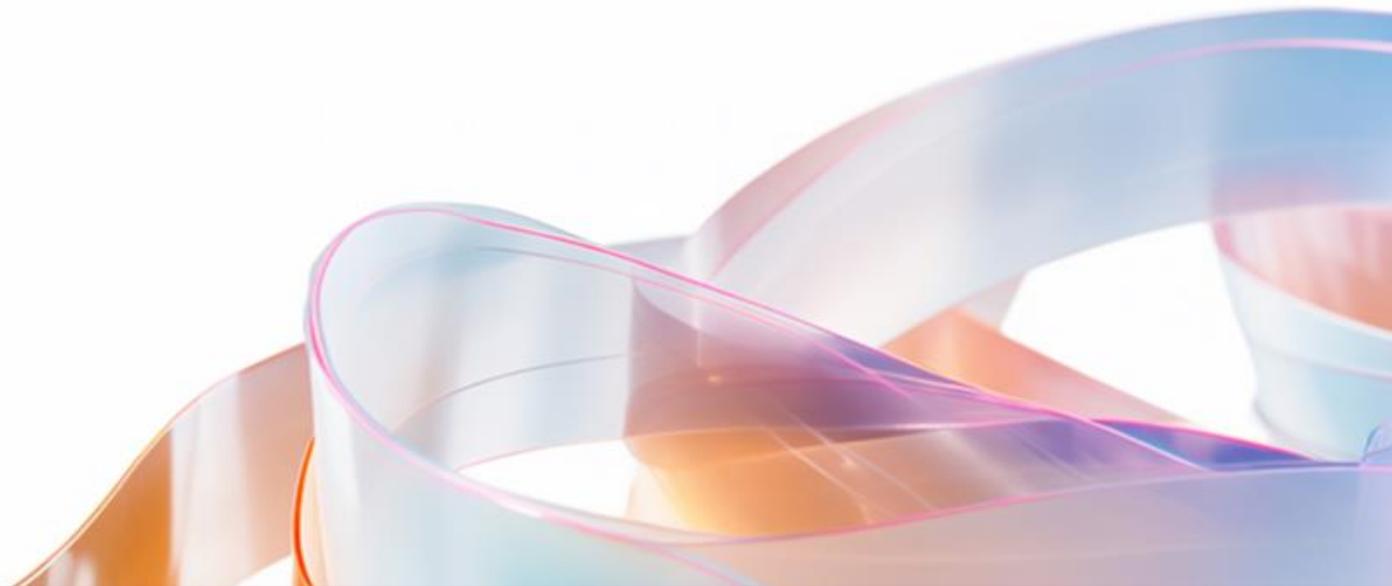
Revise and refine you prompts.

## **Copilot is not autopilot:**

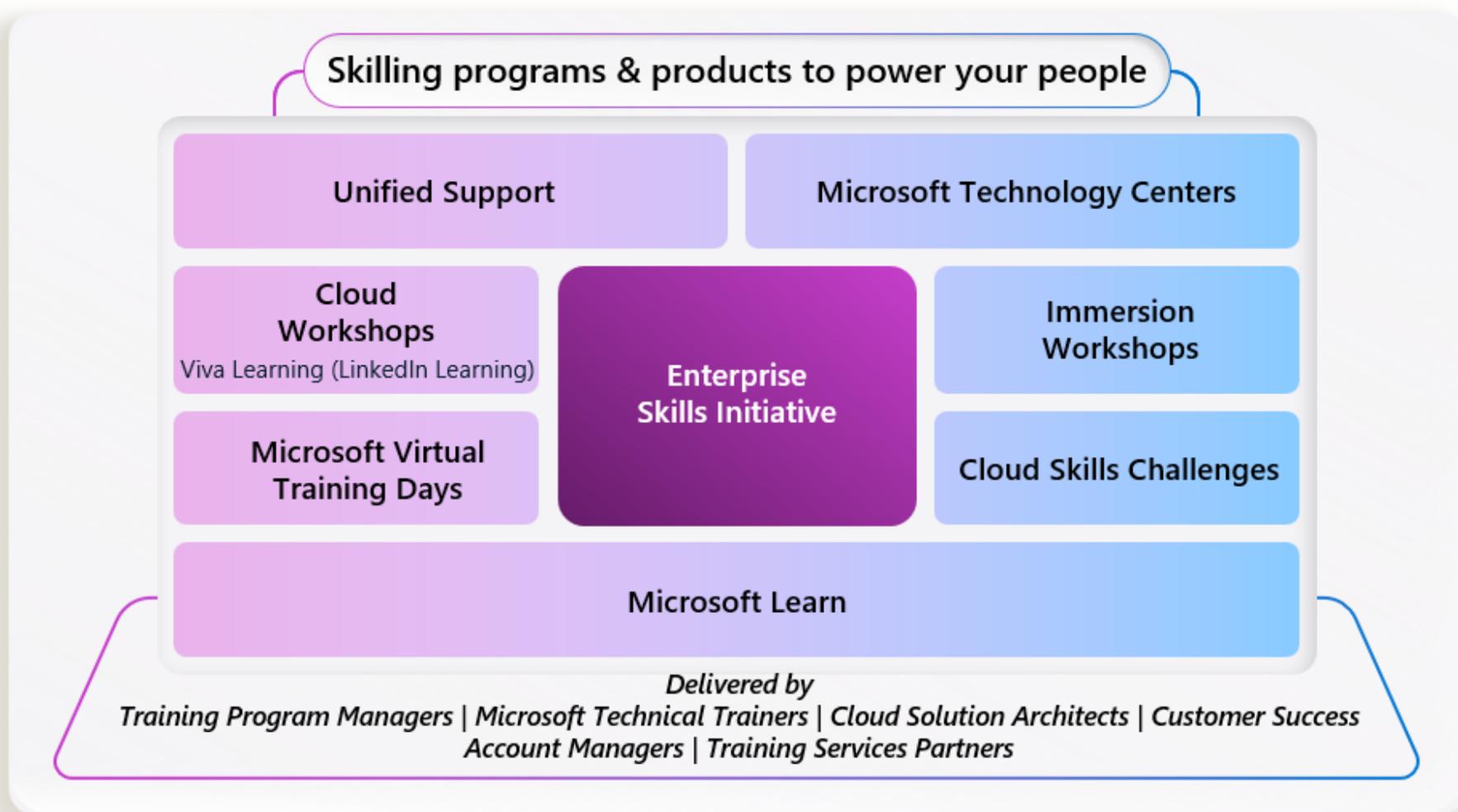
Be specific about what you want and use common language.



DEMO



# Microsoft Skilling Ecosystem



The most  
trusted and  
comprehensive  
skilling  
solution

# Next Steps

- Reach out to McKenzie & Jason to get started today.
  - Quick, Low-Effort AI Win: *Microsoft Copilot with Data Protection*
  - M365 Copilot
  - GenAI Bots
  - AI Ticketing Systems
  - And more!



## **McKenzie Williams**

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## **Jason Watson**

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# Understanding the AI options

## AI adoption

The diagram shows a horizontal timeline with three stages: 'Copilot', 'Copilot with commercial data protection', and 'Copilot for Microsoft 365'. Below this, a table details the features and licensing for each stage.

	Copilot	Copilot with commercial data protection	Copilot for Microsoft 365
	Personal	Work	Work
GPT Large Language Model	✓	✓	✓
<i>Web</i> Grounding (AI-powered Web Search, Answers & Content Generation)	✓	✓	✓
Commercial Data Protection		✓	✓
Microsoft 365 Enterprise Security, Compliance & Privacy			✓
Microsoft 365 Graph Grounding ( <i>Organization</i> Content & Context)			✓
Integration with Teams, Outlook, Word, Excel, PowerPoint and OneNote			✓
Licensing	Public and free	Available with eligible Microsoft 365 licenses	\$30/user/month

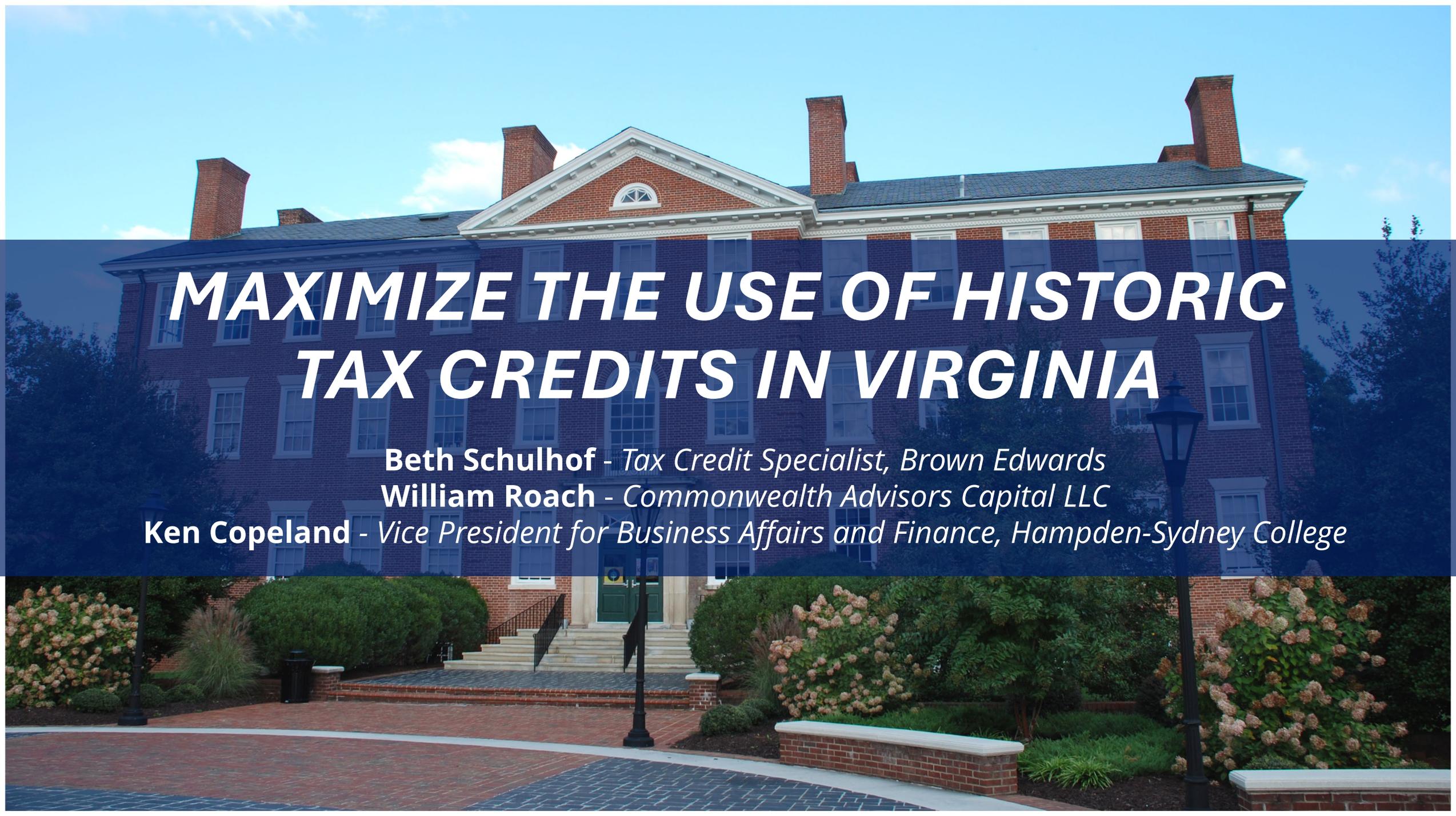


# Download Microsoft Copilot Mobile App

Login with your work  
account to access with  
Commercial Data Protection

# Q&A





# ***MAXIMIZE THE USE OF HISTORIC TAX CREDITS IN VIRGINIA***

**Beth Schulhof** - *Tax Credit Specialist, Brown Edwards*

**William Roach** - *Commonwealth Advisors Capital LLC*

**Ken Copeland** - *Vice President for Business Affairs and Finance, Hampden-Sydney College*

# H – HISTORIC BUILDING

Individually listed on a historic register  
Contributing to the historic significance in a historic district

# T – TEAM WITH EXPERIENCE

Historic consultant to prepare the HTC application package. Architect, Contractor, CPA to prepare the DHR required audit, Attorney, and Syndicator.

# C – CHECKBOOK

Virginia Department of Historic Resources requires an audit of qualifying costs



04.25.2024 LEGAL NEWS

## Virginia Historic Rehabilitation Tax Credits – Legislative Update

By: J. Conrad Garcia, Allison T. Domson & Patrick J. Carr

The Virginia Historic Rehabilitation Tax Credit (HRTC) program ([see Virginia Code § 58.1-339.2](#)) has played a significant role in stimulating Virginia's economy and preserving thousands of historic properties throughout the Commonwealth. Developers may use this credit to reimburse up to 25% of their eligible rehabilitation expenses against income taxes, insurance premium taxes, or bank franchise taxes. When combined with the federal historic rehabilitation tax credit of 20%, developers can claim a total tax credit of 45% of eligible rehabilitation expenses. These tax credits have provided developers with the ability to reinvigorate urban centers, schools, and nonprofit property throughout the state which in turn has yielded tremendous benefits for the state's economy.

A 2023 study by the Virginia Commonwealth University Center for Public Policy found that the HRTC program has had long-term positive effects on the Commonwealth's economy, generating over \$6.8 billion in private investment since its inception in 1997. The same study found that from 2015 to 2020 the HRTC program has: (1) enabled the completion of over 100 historic rehabilitation projects each year, (2) incentivized \$2.2 billion in private spending, (3) boosted the total value added from all industries in the state (Gross State Product) by \$2 billion, (4) provided approximately \$1.16 billion in salaries, wages and benefits to workers, and (5) generated an estimated \$55.9 million in estimated state tax revenue.

Notably, the properties rehabilitated by the HRTC program are also yielding long-term economic benefits for the Commonwealth. Between 2015 and 2020, properties rehabilitated through the HRTC program have: (1) contributed more than \$1.8 billion each year to Virginia's economic activity, (2) created over 10,000 jobs, and (3) generated state tax revenue approaching \$42.7 million.

A key feature of the HRTC program is that the credit may be carried over by the taxpayer for up to ten years, or until the full credit is used. Since 2017, the total amount of the credit that could be claimed by each taxpayer, including carryover, was not to exceed \$5 million in any

taxable year. The Virginia legislature through House Bill No. 960 has sought to amend and reenact the Virginia HRTC program, increasing the amount of credit available for taxpayers to \$7.5 million for taxable years beginning on and after January 1, 2025. The additional \$2.5 million is a significant increase in the annual limitation and should result in greater HRTC projects being developed in the Commonwealth.

House Bill No. 960 was signed into law on April 4, 2024, and will become effective on July 1, 2024.

## Related People



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## Related Services

- > Affordable Housing & Tax Credits
- > Economic Development
- > Real Estate
- > Tax Law